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The Right to Regulate a Utility's Salaries and Wages

Can the public service commissions direct a corporation to reduce the compensation paid to its executives or to its laborers? The query has been raised in Congress; the answers of the courts are given in the following article.

BY HENRY C. SPURR

WHEN the appropriation bill for the Reconstruction Finance Corporation was before the United States Senate recently, Senator Hugo Black of Alabama offered an amendment which, if it had been adopted, would have bound any corporation borrowing money from the Reconstruction Finance Corporation to pay no salaries during the period of the loan greater than that paid to the Vice President of the United States. This was an attempt to fix the salary limits in the case of corporations seeking government money at no more than $15,000 a year. During the debate this interesting colloquy took place:

MR. THOMAS (*of Oklahoma*)—Ordinarily, I would have no concern in the salaries paid by these gigantic corporations. Many of them are billionaire corporations. They can pay salaries of $100,000 or, perchance, $1,000,000 a year so far as I am concerned. But when they come here and ask at the hands of this Federal bank—and that is all it is, a special corporation chartered as a special bank to handle the public funds for the benefit of private industry—

MR. BARKLEY—Mr. President—

THE VICE PRESIDENT—Does the Senator from Oklahoma yield further to the Senator from Kentucky?

MR. THOMAS—I yield.

MR. BARKLEY—Would the Senator feel that the same sort of rider or restriction ought to be placed upon an appropriation for the Interstate Commerce Commission, which deals with railroad rates and practices, because the railroads come before it and ask for an increase in rates? Would the Senator feel that we ought to say, if the Interstate Commerce Commission takes out of the pockets of the people of the country additional money in the form of increased freight rates, that it ought to say also how much the railroads shall pay their presidents, vice presidents, general managers, and the rest of the employees of the company? If we embark upon a practice of that kind because we are undertaking to help somebody and say, "You cannot get this help unless you allow us to say how much you shall pay the men who are operating your business," it seems to me we are going rather far afield.

MR. THOMAS—It is within the power of the Interstate Commerce Commission now, and I have no doubt that the commission does take into consideration the salaries paid to railroad presidents and other executives in the making of their rates.

MR. BARKLEY—I dare say the Interstate Commerce Commission never would say to a railroad, "We are willing to increase the rates charged by you on freight for commodities hauled over the United States, but before those increases go into effect you will have to reduce the salaries of some of your executives."

MR. THOMAS—When the Congress begins to make loans to the corporations of the country, then the amount of the salaries which those corporations pay to their executives does become a matter of national concern.

MR. BLACK—Mr. President—

THE VICE PRESIDENT—Does the Senator from Oklahoma yield to the Senator from Alabama?

MR. THOMAS—I yield.

MR. BLACK—I may say to the Senator from Oklahoma that I have telephoned the Interstate Commerce Commission and have learned that not only do they look into the salaries of the railroad executives but they have a record of those salaries and consider them as a part of the operating expenses.

MR. BARKLEY—Of course, Congress has made it the duty of the Interstate Commerce Commission, as a general policy of the government, to look into the efficient management of the railroads; but, I dare say nobody would contend that in determining whether an increase in rates ought to be awarded to a railway company in any part of the country the Interstate Commerce Commission may say, "Before it goes into effect you must reduce the salary of your president."

WELL, how about that? Can the Interstate Commerce Commission say to a railroad company, or can any of our state public service commissions say to a public utility company: "Reduce the salaries of your officers; you pay them too much." Can the commission order utilities to increase or reduce the wages of their employees?

What control have our regulatory bodies over salaries and wages, if any? This question has arisen a number of times.

The general rule, well established, is that extensive as the powers of regulatory commissions are, they do not take away from the corporations their control over questions of financial policy. It is held that the discretion of the commission cannot override the discretion of corporation officers in the management of corporation affairs, and that a commission cannot ignore operating expenses actually incurred by a utility company unless there has been an abuse of discretion by the officials of the company.

To put it in another way, the rule is that a commission cannot substitute its judgment for the judgment of the officers of the company in the management of company affairs.

THIS is not only good law but it is common sense. One may be a good dramatic critic without himself being able to act. The critic might be hooted off the stage if he tried to demonstrate how acting should be done. An art critic might be capable of pointing out defects in the work of master painters, yet be a complete failure if he himself tried to wield the brush. The critic may

be and usually is vastly inferior as a workman to the artist he criticizes.

Able as many of our Interstate Commerce Commissioners and public service commissioners have shown themselves to be as critics of management, it does not follow that they would themselves be capable of managing either a railroad company or a public service corporation. It is one thing to be able to criticize; it is quite another thing to be able to create and manage. Valuable as the criticisms by public service commissions of managerial policies of public utility companies may be, it would be a great mistake to turn the management of the utilities over to them. The presumption of lack of practical experience in management would be sufficient to deter stockholders from welcoming commission management and should be sufficient to deter the public which has as much interest in the successful operation of these companies as have the stockholders themselves. Anyway, whether the reader believes this is so or not, the law is well established that the commissioners are not the managers of the companies.

But the boundary line between management and regulation is not always easy to determine. All regulation is a restraint on management. It must necessarily be so. Even the power to fix rates or order extensions of service is an interference with freedom of management. It is impossible to draw a definite line marking in all instances the point at which management ends and regulation begins or vice versa. That question must be settled in individual cases as it arises.

It is obvious that there must be some restraint upon freedom of action of the managers of utility companies even in the matter of finance. So it has been held that while state commissions are not the financial managers of utility companies, nevertheless, the commissions have the power to scrutinize extravagant expenditures in determining the reasonableness of rates.[1]

If so, how about salaries and wages?

The general rule thus far established is that although a commission has no power to fix salaries of general officers of a utility company, the commission may disallow excessive salaries as an operating expense.[2]

For example, if a utility company should pay a particular officer a salary of $25,000 a year and the commission should deem that the sum of $15,000 is all he should get, the commission may say to the company: A salary of $15,000 is reasonable in this case; therefore, you shall be permitted to charge only that sum to operating expenses. You may continue

[1] *Re* Cumberland & Allegheny Gas Co. (W. Va. 1927) P.U.R.1928B, 20.
[2] Railroad Comrs. *v.* Hughes Electric Co. (N. D. 1924) P.U.R.1925A, 18.

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to pay the $25,000 if you wish but if you do you must take $10,000 of it out of the company's return or profit. That is a matter between you and your stockholders. The ratepayers are not interested in that. They shall, however, be charged only with the reasonable cost of operation, which includes reasonable salaries of officers. In this way the rates would be fixed on the basis of the $15,000 salary even if the company continued to pay the higher amount.

In one case the Virginia commission held that general officers' salaries paid by a telephone company amounting to $6.35 per telephone were excessive, and that $5 per telephone would be sufficient. The commission said it did not pass upon salary questions as between stockholders and the officers of a corporation, but that when the public is called upon to pay in increased rates salaries which constitute too heavy a burden, it is the duty of the commission to take note of it.[3]

In a Nebraska case it appeared that the president of a telephone company was getting 5 per cent of the gross receipts as a salary. The commission held this basis of payment to be wrong and said:

> "While this commission does not presume to say what compensation may be paid, it has said heretofore and now does say in this case, what may reasonably be required to be contributed as an operating expense by the ratepayer for the service rendered."[4]

BUT there is some doubt as to how far commissions may go in substituting their judgment for that of the managers of utility companies in determining the reasonableness of salaries for rate-making purposes.

In an Indiana case it appeared that the salary of the president of a telephone company was $7,920. He had acted as president and general manager of the company but afterwards the general management had been transferred to another person who was paid a salary. The commission was of the opinion that the salary of the president should, therefore, be reduced to $2,500 annually. On appeal to a Federal court it was held that there was nothing in the act creating the public service commission, which authorized it to fix the salaries of general officers of the utility. The court said it undoubtedly had power in adjusting rates to disallow as operating expenses extravagant salaries, but the court held that the evidence in the case showed that the president devoted his entire time to the business of the company which, under his administration, was being efficiently conducted. The court thought that his services might well be worth more than the amount charged and held that to disallow the item mentioned was unwarranted.[5]

In one case in which the Maryland commission disallowed a portion of the salary of a bridge company official as a charge against operating expenses, the Maryland Court of Appeals held that this was an improper interference with management. Said the court:

> "It is not intended in what has been said to intimate that under no circumstances have the public service commission the

[3] *Re* Clifton Forge Mut. Teleph. Co. (Va.) P.U.R.1920C, 252.

[4] *Re* Coos & Curry Teleph. Co. (Or.) P.U.R.1924E, 344.

[5] Home Teleph. & Teleg. Co. *v.* Public Service Commission (U. S. Dist. Ct.) P.U.R. 1922B, 478.

A Commission Cannot Override the Corporation's Officials in Matters of Management

"THE general rule, well established, is that extensive as the powers of regulatory commissions are, they do not take away from the corporations their control over questions of financial policy. It is held that the discretion of the commission cannot override the discretion of corporation officers in the management of corporation affairs, and that a commission cannot ignore operating expenses actually incurred by a utility company unless there has been an abuse of discretion by the officials of the company."

right to treat an allowance of salary as an improper charge by the corporation; undoubtedly where there has been a flagrant abuse of such power the public service commission may intervene, but the record in this case is entirely devoid of anything to show that the power of the directors to fix the salaries of the officers of the company has been in any way abused. In this regard, therefore, the effect of the order of the commission is undoubtedly to interfere with the financial management of the company."[6]

So the New York commission has said that although expenditures by salaries may be open to criticism, the commission cannot supplant the judgment of the directors of a corporation when the expenditures are not for nominal services or diversion of earnings from the stockholders.[7]

IT should be noticed that in comparatively few cases have the commissions found it necessary or deemed it advisable to interfere with the discretion of the management of utility companies in the payment of salaries. The general rule as to the right of commissions to disallow extravagant expenditures undoubtedly applies to salaries but should be exercised with the greatest of care, because it is difficult to establish any satisfactory standard for the measurement of the value of personal services. It must be remembered that the managers are in a better position to judge of the value of services in individual cases than are the commissioners. There is no doubt whatsoever, however, as to the power of the commissions to act where there has been plainly an abuse of discretion on the part of the management.

NOW we come to the much more delicate question of the power of the government or its regulatory commissions over wages. A wage dispute between the railroads and their employees resulted in the establishment of a law which may not be altogether satisfactory to labor although it amounted to an increase in wages in the particular case.

[6] Havre De Grace & Perryville Bridge Co. *v.* Towers, 132 Md. 16, P.U.R.1918D, 484.
[7] Breen *v.* Northern New York Utilities (N. Y. 1920) P.U.R.1921B, 463.

The outstanding decision on the power of the government to fix wages of railroads and utility employees is that of the Supreme Court in upholding the constitutionality of a Federal law establishing an 8-hour day for, and regulating temporarily the wages of, railroad employees engaged in the operation of trains upon interstate railroads.

When the railroad executives and the labor leaders failed to agree on the question at issue, a general railroad strike was ordered. In this emergency Congress stepped in and passed the 8-hour law as the measure or standard of a day's work for the purpose of reckoning the compensation for services.

This, it will be observed, was not really a statute regulating the hours of labor but one fixing the basis of reckoning wages. In other words, it was a regulation of wages and as such was, as stated, a victory for labor in that case. But the question of governmental power was involved.

The court first pointed out that the carriers' freedom of contract in respect to wages was subject to the power of the government to regulate —at least in the absence of agreement —between capital and labor. The reason given was that the business is charged with a public interest. Freedom of contract was subject to the superior power of the government to regulate that kind of business. The court then applied the same rule to labor. Mr. Chief Justice White said:

> "Here again it is obvious that what we have previously said is applicable and decisive, since whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he desires, to them, and, by concert of action, to agree with others to leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business charged with a public interest and as to which the power to regulate commerce possessed by Congress applied, and the resulting right to fix, in case of disagreement and dispute, a standard of wages, as we have seen, necessarily obtained.
>
> "In other words, considering comprehensively the situation of the employer and the employee in the light of the obligations arising from the public interest and of the work in which they are engaged, and the degree of regulation which may be lawfully exerted by Congress as to that business, it must follow that the exercise of the lawful governmental right is controlling." [8]

So, while the law granting increased compensation to railway employees was upheld by the court, it was upheld on the ground that the government has power, in the case of a business affected with a public interest, to fix wages where labor and capital cannot agree. In other words, it upholds the constitutional right of the government to make arbitration of wage disputes in businesses affected with a public interest compulsory if it so desires, a rule which labor in general has not been in favor of, and which it has insisted is an unconstitutional interference with the freedom of contract.

If the government or state public utility commissions have the power to increase wages, it follows that they must have the power to refuse to increase them or even to order decreases, although they have no power to compel labor to work at a reduced wage fixed by governmental authority. Neither would the government for that matter have the power to compel utility companies to pay increased wages fixed by it if that re-

[8] Wilson *v.* New (1917) 243 U. S. 332, 61 L. ed. 755.

¶ *"If the government or state public utility commissions have the power to increase wages, it follows that they must have the power to refuse to increase them or even to order decreases, although they have no power to compel labor to work at a reduced wage fixed by governmental authority."*

sulted in a confiscation of a utility company's property.

Aside from the decision of the Supreme Court in the case mentioned it would seem that if state commissions have the power to disallow extravagant salaries, as against ratepayers, they would have the power to disallow extravagant wage agreements although it is conceivable commissions might hesitate to exercise that power.

After the Supreme Court decision in the railroad hours of labor rate case, a complaint as to the inadequacy of wages of employees of a street railway was made to the Nebraska commission.[9] The company came in and protested that the commission had no power to fix wages; that the right of contract is guaranteed both by the Constitution of the United States and that of Nebraska. This plea was overruled by the commission. The commission held that the rights of the public transcended those of either party to the controversy or both combined. The commission said:

> "As to how far the state may go in regulating wages generally, we are not called on to determine. The jurisdiction of the commission relates to the subject only so far as wages affect service and rates. It is our duty to determine that matter, and we shall not hesitate to do so, but it is just as clearly the duty of the commission to refrain from undertaking to determine matters not affecting the public service and, therefore, not within its jurisdiction."

[9] Short *v.* Omaha & C. B. Street R. Co. (Neb.) P.U.R.1920F, 269.

Before the hearing was concluded the employees wanted to withdraw their complaint and the company was willing, but the commission refused to let that be done. A hearing was held after which the commission dismissed the complaint on the merits saying that it did not appear that the wages paid were not sufficient to attract suitable men in sufficient numbers. The commission also said:

> "It also follows that if the pay of the street-car employees is to be raised, the operating expenses will be correspondingly increased, all of which in turn must be met by an increased fare. To give increased wages to the street-car employees would be to subtract that much from the income of those engaged in other lines of labor in the city of Omaha, and who are now getting, on the average, a smaller wage than are the employees of this company."

Thus the issue of the power of the commission to fix wages was fairly met and upheld by the commission. In this case the result was unfavorable to the employees, contrary to the outcome in the Federal case, showing, as often happens, that established rules work both ways. Commissioner Browne concurred in the conclusions of the majority based on the facts in the case but said that the commission had gone too far in some of its conclusions of law.

In a New York case it was held that the commission should not, without question, allow an increase in rates in order to permit the payment of such wages as may be demanded

by employees; that the so-called platform expenses of an electric railroad constitute a very large proportion of its operating expenses and that the commission should see to it that that item, like all other items of expense, is reasonably incurred before permitting it to be loaded upon the public in the form of increased rates. Commissioner Irvine said:

> "In considering the present plight of the company, the commission has, therefore, not based its calculations merely upon the demands of the employees, but has endeavored to estimate platform expenses on the basis of average wages prevailing for motormen and conductors on comparable systems. This is substantially higher than the rates heretofore paid, but much lower than those insisted upon by the employees at the time of the hearing." [10]

[10] *Re* Western New York & P. Traction Co. (N. Y. 1919) P.U.R.1920A, 951.

The rule as to wages so far as it rests upon present decisions would, therefore, appear to be that the government or its duly authorized commissions may not only disallow extravagant wages as a charge against operating expenses of public utility companies, but may actually fix wages in case of wage disputes.

Not enough decisions of the courts have been made, however, to warrant the conclusion that the law is settled that the power of the government to interfere with management policies as to salaries and wages is as extensive as that.

The state of the law on this question and not the reasonableness or unreasonableness of the decisions is the only subject here discussed.

Odd Items About the Utilities

FIFTY-FOUR per cent of the stock of the American Telephone and Telegraph Company belongs to women.

* * *

THE first prize for a "safety first" poster has been awarded by the French State Railways to an American artist.

* * *

IT is predicted that 1,000,000 passengers will be carried in the air in the United States during the present year.

* * *

A DEVICE has been invented for automatically switching off the radio when the telephone receiver is removed from the hook.

* * *

SUBWAY passengers in London are to be "hypnotized" into following the proper passageways and stairways by the use of slanting lines, (to replace the placards that are seldom noticed), which the patrons are expected to follow by sheer force of suggestion.

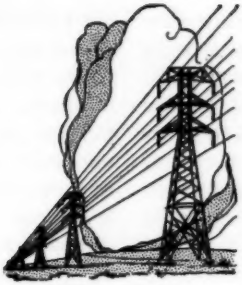
* * *

IN a campaign now being conducted in Pennsylvania to reduce utility rates, customers are attaching stickers to utility bills, bearing the legend: "PAID UNDER PROTEST UNTIL RATES ARE REDUCED TO CONFORM WITH CONDITIONS."

* * *

IT has been ruled libelous for a telegraph company to transmit this telegram: *"Slippery Sam, your name is pants.* (Signed) *Many Republicans."* [1]

[1] Peterson *v.* Western Union Teleg. Co., 65 Minn. 18, 67 N. W. 646.



HOW NEBRASKA IS PROJECTING A STATEWIDE

Hook-up of Municipal Plants

What the proponents of government ownership and operation have done to check the sale of city-owned power stations to private corporations, and to stimulate the growth and interconnection of publicly owned enterprises.

By H. T. DOBBINS

THE state of Nebraska has completed the setting up of legal machinery that makes possible a new use of the old weapon of public ownership in the field of electric energy competition.

The eventual goal sought is a statewide hook-up of all municipally owned power plants that will place the combination on a more than equal footing with the transmission line companies that have almost complete interconnection within the borders of the state. In the meantime it has almost entirely halted a movement that has been going on in the state for half a dozen years and which had brought about the sale of a large number of publicly owned plants to the private power companies; it had also induced a number of municipalities to abandon the manufacture of electric energy and to purchase the necessary current at wholesale from line companies.

How effective this movement has been is shown by the fact that while thirty-four towns sold their municipal plants between August, 1926, and August, 1928, and sixty-three from the last-named date until the law referred to became effective, but five plants have been sold since then, and these have been small ones.

UNDER the leadership of Attorney General Christian A. Sorensen, for fifteen years the chief political lieutenant in the state of Senator George W. Norris, a group of laws have been assembled that will enable the experiment to be made under most favorable circumstances. Power companies are being firmly restrained from increasing the number of towns they supply while the municipal plants are free to invade their territory if

they wish to do so. Both the attorney general and Senator Norris express the belief that in the combined operation of these laws it will be possible to effect that control over electric energy rates that, so both say, the regulatory bodies and forms have failed to exercise in the effort of offering the lowest possible schedules to the public.

The plan had the enthusiastic endorsement of Carl D. Thompson, directing head of the Public Ownership League of America, and he contributed time and energy towards its success. Mr. Thompson expects that not only will the Nebraska experiment be watched with close interest both by friend and foe of the policy he champions, but that its results will have a profound effect upon the future rate policies of the power companies generally.

Under the set-up that now prevails it will be possible for municipal plants to extend their lines wherever and as far as they please, without asking the consent of the voters of the cities and towns in which they are located, and to join with irrigation districts and public power districts in serving rural patrons, as well as serving the latter direct.

NEBRASKA is particularly well adapted as a proving ground for the theories involved. Few other states have developed public ownership as widely. This policy has been championed by Senator Norris over a period of years, and the sentiment that exists forms an important source of his political power. The reluctance of private capital in the earlier years of electrical development to invest in plants in the smaller towns of the state because of the limited area of service and the low level of the financial resources of the residents practically forced the more enterprising municipalities to build and operate their own plants. At one time they numbered 278, most of them serving at cost and some of them, operated in connection with waterworks, being carried along out of water revenues. Ninety-seven of them generated their own current.

Then came the era of transmission line development on the part of the privately owned companies, their combination and amalgamation until at the present time only half a dozen are left. Today the state is gridironed with their high-tension wires, nearly all interconnected and able to provide continuous service at all hours. This brought cheap power to the doors of the small towns with their own plants, and finding that they could buy from the high-line companies at materially less than it cost them to manufacture current in their isolated factories, town after town voted to go out of the power production business. Many sold their entire plant, distribution system, and all, and voted franchises embodying greatly reduced rate schedules for fifteen and twenty or twenty-five years. Still others made contracts to buy at wholesale rates, and remained in business only as distributors. Today only sixty-seven towns operate generating plants.

THIS rapid decrease of the number of publicly owned plants in a state that had so long been sold on the idea of public ownership alarmed the leaders of that school of political

thought and action. It also carried a menace to the ambitious seekers after office who had utilized this sentiment to their personal advantage. They affected to see in the movement a conspiracy of capital to eliminate municipal competition from this profitable field of public service, with the end in view of raising and maintaining higher rates. Appeals to the towns where proposals of purchase were pending from time to time availed nothing. Confronted with the certainty of getting current at a half to a third of what they had been paying, at a time when they were selling their old plant for more than it ever cost them, the villagers hesitated not at all. They sold.

A counter offensive was developed through the agency of the Nebraska League of Municipalities, made up in large part of mayors and councilmen from the cities owning and operating lighting plants. Well-managed municipal plants have long been in operation at such important points as Lincoln, Fremont, Hastings, Grand Island, Fairbury, Holdrege, and Alma, and although private competition existed at most of these places, the municipal plants have flourished and have acted as ratemakers. Most of them began with small investments of public funds and developed through the use of surplus earnings. As a rule, their facilities were not available to surrounding towns or sections. The few exceptions have been cities that simply assumed they had power to extend their lines, and did so. The supreme court gave a partial assent to the proposition that they had this inherent right, but public ownership leaders were not willing to rest the matter on these decisions since they might be overturned later by a court made up of different judges.

At the 1929 session of the Nebraska legislature the league of municipalities presented a series of demands in the form of proposed laws. These included a grant of power to cities which owned their own plants to extend their lines wherever they pleased and to do this without having to submit each extension to a vote of the people so long as they were able to finance their construction by pledging future earnings to the machinery and supply men. The movement also included a series of bills that would have required a 60 per cent vote of electors to sell a plant or to grant a franchise, limiting the franchise grants to short periods of time, and in other ways making difficult, if not impossible, the taking over of these plants by privately owned companies. These proposed bills were vigorously fought by the private companies, and

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only one of the group of bills became a law—and that in such a form that it was unworkable.

Raising the cry that the legislature had been dominated by the "power trust," the league called a mass meeting. At this gathering, Mr. Sorensen presented new drafts of the old bills, and an organization known as the People's Power League was effected to secure enough signers to petitions that would force a vote of the people at the November election. At the same time the power companies caused petitions to be circulated that differed in several important respects from the originals, and which would have required a vote of the people before the policy of extensions could be entered upon. Both petitions secured a sufficient number of signers, and all of the proposals they embodied were submitted at the election. The public ownership group secured the adoption of theirs, and the governor a little later proclaimed them a part of the body of the state law. The principal argument that won for them was that the main proposal merely granted to publicly owned plants rights and privileges freely granted by law to the private companies under their charters.

THE proposal adopted empowers any city, village, or public electric light and power district within the state, which may own or operate or hereafter acquire or establish any power plant, distribution system, or transmission lines, to extend its service beyond its boundaries, and may enter into contracts to furnish electrical energy to any person, firm, corporation, municipality, or public electric light and power district. No such construction, lease, purchase, or extension shall be paid for except out of the net earnings and profits of one or more or all of the plants. Power to interconnect is also granted.

In lieu of issuing bonds or a tax levy, the council or governing board may pledge, assign, or hypothecate future net earnings, and may issue warrants or debentures to carry out this provision.

Before any private corporation can purchase or lease any municipal plant or system, four months' notice must be given in at least one newspaper in the town or district, and a 60 per cent vote of the electors is required to authorize the transaction. Before submission, the private company must file with the department of public works a copy of all instruments connected with the transaction, together with a report in detail of what is being purchased and the actual cost of it, along with a complete financial statement of its operations for the three previous years. These must be sworn to; a heavy penalty is attached for making a false statement. No sum in excess of $3,000 may be paid out by the private company in the campaign to secure consent of the voters, and if this is exceeded the sale shall be void and the person or firm paying the excess money imprisoned in the penitentiary.

A PREËXISTING statute provided for the organization of public power districts, made up of either town or rural units or a combination of both, but Attorney General Sorensen doubted its validity because it delegates legislative powers to governing

The Unusual Powers Granted to the Municipal Plants

"UNDER the set-up that now prevails it will be possible for municipal plants to extend their lines wherever and as far as they please, without asking the consent of the voters of the cities and towns in which they are located, and to join with irrigation districts and public power districts in serving rural patrons, as well as serving the latter direct."

boards. At the last session the legislature passed a law permitting irrigation districts to embark in the manufacture, sale, and distribution of electrical energy. These may connect with each other or with other power districts or agencies of the Federal government, meaning irrigation dam power plants. Before submitting the question to the voters the state department of public works must pass on the feasibility and practicability of the plan, and a 60 per cent vote is required at the subsequent election. The governing board may make tax levies or assessments, and may also pledge future earnings.

MUCH stress has been laid by the backers of this legislation on the necessity of insuring to rural residents adequate service at reasonable rates. They point out that in the territory surrounding the cities and towns that own their plants farmers have been practically without opportunity to secure service since there are no private company lines available. The most the farmers could do in the past had been to build electric lines to the municipal borders.

The department of agricultural engineering at the state college of agriculture recently issued a pamphlet giving the results of a survey of rural electric service in the state. In this the engineers cite facts that they say should interest the people of those towns hoping to take advantage of this new legislation which authorizes extensions that depend upon net incomes to pay construction costs. They find that very few municipal officials could give data concerning revenue from their farmer customers or costs of upkeep debited against farmer connections or losses due to distribution, and that where figures were available from municipalities with inter-town lines that supply farmers the revenues indicated loss to the town and very little advantage to the farmer.

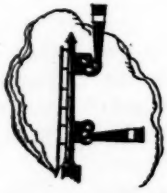
The survey reveals also that of the 850 towns in the state, 550 have some form of electric service. Of these, 119 towns are being served from 74 municipal stations which own about 300 miles of transmission lines, many of which have no farm connections.

Only 40 towns have farm patrons, and the total they serve is but 413 out of the 3,566 farmers who now purchase current from both sources.

ECONOMIC maladjustments, particularly in the field of agriculture, have lately been potent in calling a halt to practically all extensions, both by the public and privately owned plants, and little use has so far been made by the municipalities of their new-found powers. Six of these only report that they have built lines to serve rural patrons, and these have been to nearby areas. That at Hastings has contracted to serve two small towns in its trade territory. In western Nebraska, territory served now by the Western Public Service Company, four small cities adjacent to one another are working on a proposal to issue warrants for the financing of distribution and pole line construction and to purchase current from the Federal government power plant in Wyoming.

THE executives of the private power companies heavily discount the claims of the backers of the general movement that they have achieved something worth while. They concede that the situation presents a potential competition statewide in character, and that the difficulties that have been placed in the path of their acquirement of municipal plants in the future have been very greatly increased. While the public ownership group looks forward to a statewide hook-up of municipal plants, the private company managers point out that the existing plants are too widely scattered to make the plan feasible at this time, and that the future holds out little prospect of a change in economic conditions great enough to make any measurable success probable or possible.

Nevertheless, there has been created a body of law that provides the framework and the authority for proceeding with the attempt, and it has been secured largely through the efforts of the men who have political control of the municipal plants as well as of the state itself. If they find that they need legislation, they expect no great difficulty confronts them in securing it.



A Business Prophecy

"IT is a gloomy moment in history. In France the political cauldron seethes and bubbles with uncertainty. Russia hangs, as usual, like a cloud dark and silent upon the horizon of Europe, and all the energies and resources of the British Empire are sorely tried, and they are to be tried more sorely, in coping with a possible Indian insurrection. Of our own troubles no man can see the end."

—HARPERS WEEKLY, *October 10, 1857.*

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

DR. WALLACE B. DONHAM
Harvard University.

"All our experience teaches the growing dangers of centralization of authority in Washington."

BENJAMIN BAKER
Financial editor.

"A unified banking system under Federal control and pretty strict Federal regulation is perhaps the outstanding single need of this country."

SAMUEL DANZIGER
Contributor to "The Nation."

"Those who approve of President Hoover's servility to the power and other monopolistic interests will not need to worry if Governor Ritchie displaces him."

F. P. ADAMS
Newspaper columnist.

"'Well,' said the vice president of a corporation yesterday, 'my advice to you directors in meeting here assembled is to take the stockholders, put 'em away in the vault, and forget about 'em.'"

GEORGE WHITE
Governor of Ohio.

"I feel that these (public utility) industries have suffered less from the current depression than any other, and can best afford to contribute to the alleviation of the desperate needs of the citizens of our state at this critical time."

HARRY ELMER BARNES
Writer and economist.

"I should like to see American civilization move along the lines suggested by Messrs. Charles A. Beard and Dennis. But I fear that they will first follow the dictates of Hoover, Strawn, Mellon, Sloan, Insull and Company, then the ideals of Mussolini and the Fascists, and end up in an American version of Communism."

GEN. W. W. ATTERBURY
President, Pennsylvania Railroad.

"The unsatisfactory conditions in the railroad industry, while accentuated by the present depression, are due to the fact that during periods of expansion, the railroads have not been permitted, because of inadequate rates, restrictive legislation, and subsidized competition, to participate adequately, as do all other industries, in the country's prosperity, all of which emphasizes the unsoundness of existing methods of governmental regulation."

The Trend Toward Municipal Ownership of Water Utilities

The unique factors that have brought, are bringing, and are likely to bring the waterworks enterprises under government ownership and operation, in the face of the general preference of the American people for private ownership of public service companies.

By DR. RALPH L. DEWEY
PROFESSOR OF ECONOMICS, OHIO STATE UNIVERSITY

THE development and ownership of waterworks are phases of modern gregarious living which necessarily attract the attention of every citizen. This article—after a brief statement of the historical development of central water systems—treats of the absolute and relative amounts of ownership as well as the factors which have caused the changes in the character of waterworks ownership.

THE problem of securing an adequate water supply has been of importance since the dawn of history. After primitive man had eliminated in part the uncertainties surrounding his food supply, he set about the development of various public works, the most important of which was the provision of water. The public wells of Egypt, Mesopotamia, and of Biblical times may be cited as evidence of early recognition of the problem.

Later the aqueduct was introduced, developing first from a mere ditch which led the water of a stream into a town, then to an intermediate stage in which the ditch was lined and covered with stone, and finally to a true aqueduct consisting of pipes.

The aqueducts supplied water to the temples, the imperial palaces, the public baths, and, in some instances, to the entire community, reaching their highest development in ancient times during the great days of the Roman Empire.

As a necessary complement to the development of a water supply, it was early found desirable to establish systems of sewage disposal, which usually took the form of canals. The

most notable of these canals, the Cloaca Maxima of Rome, carried the sewage and storm water of the entire city to the waters of the Tiber. It is clear that the Romans at least had a high appreciation of the value of pure water and sanitation, inasmuch as systems were installed even in the temporary Roman military camps.

The relatively important development of water supply in antiquity was succeeded by a very great retrogression in medieval times. Public authority was never strong and water supply was largely private except for certain public wells and fountains. The earliest development of a water system on improved lines occurred in London in 1283. The municipalities of Plymouth (1585) and Oxford (1610) followed with similar developments during the early centuries of the modern era.

While Europe was turning an increasing amount of attention towards the provision of water, a feudal lord of Japan, Tokugawa Ieyasu, who was the first ruler to establish an independent capital in Tokyo, laid in 1591 a system of water mains in that city. This interesting fact was only recently brought to light when a gang of workmen, who were excavating for a sewer, dug up some of the old wooden mains. That the system installed by Tokugawa Ieyasu was of some magnitude is indicated by the fact that the source of water supply was a river some forty-nine miles distant from Tokyo.

In America, the first central water supply system was installed in Boston in 1652. By 1820 similar systems were general in large cities and water was available for domestic and industrial uses as well as for fire protection.

Early waterworks projects were developed under both municipal and private auspices. The city of New York began a municipal enterprise in 1774 but failed to complete its task. After the interruption of the Revolution, a private corporation in which the city held some stock began a system (1799) which had extended to twenty-five miles of main in 1823. A few years later (1830) the city developed its own works for fire protection, and this soon became the Croton River System.

The first successful municipal enterprise originated in Philadelphia, which began in 1798 to secure a supply from the Schuylkill river. Other cities to have central systems at an early date were Worcester, Massachusetts (1798), Portsmouth, New Hampshire (1798), and Albany, New York (1799). A number of cities were very slow to establish water systems. San Francisco, which was first settled in 1776, had no system until 1857; New Orleans, founded in 1718, had none until 1836; and Cleveland, organized in 1810, existed without a water system until 1853.

The technical advances in the development of water supply have been significant, particularly since the Civil War. It has become the rule to supply water under pressure, and for a time, modern centrifugal pumps driven by steam turbines were used to the exclusion of other forms of power. Lately, electric power has come to supersede steam power in the pumping of water.

Certain changes in the sources of supply have also occurred in the past century or so. Originally, the chief sources were rivers and lakes, because the absence of extensive sewage systems minimized the dangers of pollution. With the passage of time the wider use of sewage systems and the increasing pollution of our streams by industrial discharges noticeably increased the sickness and death rates and thereby forced public health authorities to give attention to the source of water supply. The solution of the problem generally adopted was the installation of filtration systems, supplemented whenever necessary by facilities for the softening of the water.

Other notable improvements were the introduction of water meters and the increasing use of storage reservoirs. These reservoirs are particularly useful in increasing the water pressures at the taps and equalizing the demands upon the primary sources made necessary by the variations in the consumption of water from time to time.

The United States contains a number of notable water systems from the standpoint of size and efficiency. In Chicago, we find water brought in huge quantities from Lake Michigan and sent through its sewage disposal plant into the Chicago Drainage Canal and thence into the streams leading to the Mississippi river. Both of these actions have led to some controversy, particularly the drawing of water from Lake Michigan. It is charged that this action has resulted in a lowering of the level of the Great Lakes and, therefore, injury to navigation as well as a reduction in the amount of potential hydroelectric power available at Niagara Falls.

Another system of importance is that of Los Angeles whereby water is brought some 240 miles by aqueduct from the eastern slope of the Sierra Nevada mountains and distributed to the citizens of that city.

Most notable of all is the water system of New York city which, in the case of the Catskill aqueduct, alone the largest in the world, has a capacity more than 10 times as great as that of all the aqueducts of Ancient Rome combined.

For many years or until the decade ending in 1900, private water utilities were more numerous than municipal water utilities. In 1800, only one or 6.3 per cent of the sixteen waterworks then in existence was publicly owned—the one in Alexan-

¶ "Any *efficient water system must provide means for impounding a water supply by erecting dams and creating reservoirs. . . . Expensive aqueducts must be constructed. Often these costs are so high that the chance of profit is quite remote; certainly little possibility of immediate profit exists. Under such circumstances, private investors are loath to underwrite the project, and the city, in order to secure a supply, must of necessity undertake the cost of providing water to its inhabitants.*"

dria, Virginia. In each succeeding decade until 1850 waterworks became slowly but steadily more numerous until in that year 33 or 39.7 per cent of the 83 plants were publicly owned.

After 1850, the growth of waterworks systems was much more marked, due no doubt to the greater prevalence of urban centers and a livelier sense of the necessity of adequate water and sewage systems. By 1896, the total number of waterworks had increased to 3,179. Of the 3,179 systems, 1,690 or 53.2 per cent were operated by cities and towns. Therefore, not only was there a vast increase in the number of waterworks, particularly during the second half of the last century, but there was also a marked tendency for publicly owned systems to increase more rapidly than privately owned systems until by the end of the 19th century public plants actually exceeded in number the private plants.

THIS development was carried forward rapidly during the first decades of the present century. In 1915, publicly owned waterworks were found in 3,045 or 68.6 per cent of the 4,440 communities listed in the McGraw Water Works Directory. The United States Census of 1920 listed 155 municipally owned systems in the 204 cities having at that time a population in excess of 30,000, a somewhat higher percentage (76.0) than for the country at large.

At the present time, Indianapolis is the only large city supplied exclusively by a private water system. Cities which have a mixed system of public and private ownership are more numerous and include among others San Francisco, New Haven, Denver, and Birmingham.

Each of the ten largest cities in the United States, ranked according to the United States Census of 1920, owns and operates its own waterworks. Included in this group are New York city, Chicago, Philadelphia, St. Louis, Boston, Cleveland, Detroit, Baltimore, Pittsburgh, and Los Angeles. All of the thirty-six largest cities in the United States except one either own entirely or in part their water systems.

FROM the foregoing it is clear that not only have central waterworks systems developed very rapidly, particularly since the middle of the 19th century, but that most of the expansion in recent decades has been under municipal auspices, both absolutely and relatively.

It will occasion no surprise that we should have had a rapid increase in the number of waterworks. Growing cities need pure and adequate water supplies to meet industrial, domestic, sanitary, and fire-protection needs. The privately owned individual well becomes obsolete when communities number more than 2,500 inhabitants, and since in the United States in 1920 the census listed over 2,700 towns and cities with a population in excess of 2,500, it is obvious that necessity has dictated this development.

Why has the major portion of waterworks construction and operation been in the hands of municipalities?

When it is remembered that the American public has been hesitant to

Why Have Most Waterworks Projects Been in the Hands of the Municipalities?

"WHEN it is remembered that the American public has been hesitant to undertake the ownership and management of other public utilities, our question seems peculiarly significant. A study of the situation, past and present, shows pretty definitely, however, that economic and social factors of considerable uniqueness have served to force an ever-increasing proportion of municipal ownership in the waterworks field."

undertake the ownership and management of other public utilities, our question seems peculiarly significant. A study of the situation, past and present, shows pretty definitely, however, that economic and social factors of considerable uniqueness have served to force an ever-increasing proportion of municipal ownership in the waterworks field.

FIRST and foremost have been sanitary and hygienic considerations. Whatever else may be desired of a water supply it must be pure. The increasing death and sickness rates were forcibly brought to the attention of the public authorities, as we noted above, as early as the eighteen-fifties. It did not take a great deal of research to prove that much of the difficulty could be traced either to impure water or lack of water. It was also clear that privately owned water companies were often not as diligent as they should have been in inspecting and testing the water supply for harmful impurities and, when such were discovered, in eradicating the source of the evil. The purpose of private ownership was and is to earn profits for the owners. The cost of installation of filtration plants was considerable and must, of course, reduce profits unless the public could be induced to increase its consumption sufficiently to cover the annual costs of the improvement, or to pay higher rates for existing volumes of water. Hence the quality of water supply was allowed to suffer, because equipment and inspection needed to insure purity increased costs but not necessarily revenues.

AS an example of the superiority of municipal over private plants in this respect, one may cite the experience of Columbus, Ohio, where the municipal plant uses five different processes for the purification of its water. These processes include sedimentation, coagulation, slow sand filtration, mechanical filtration, and chemical sterilization. Quite naturally the total cost of performing these services is considerable ($17.46 per million gallons) and a private company would be reluctant to assume the burden.

The experience of Columbus is the experience of any large, congested

city, where the problem of protecting the water supply is so great that private enterprise is seldom if ever equal to the task.

In addition to sanitary and hygienic consideration, the growing need for fire protection has led to an increase of municipal ownership. Adequate fire protection rests upon ample supply and high pressure, together with numerous outlets in all parts of the city. It was difficult to secure in all cases adequate provision of these requirements under private ownership. As was indicated above, the interests of the individual and of society are often opposed and where the public need was very urgent as it is in the case of fire protection, adequate protection of the public interest necessitated as a rule municipal ownership of waterworks.

IN the third place, the construction costs and hence the fixed charges of a waterworks system are often very great.

Any efficient water system must provide means for impounding a water supply by erecting dams and creating reservoirs. Whenever these reservoirs are located at a considerable distance from the city, as in the cases of New York or Los Angeles, expensive aqueducts must be constructed. Often these costs are so high that the chance of profit is quite remote; certainly little possibility of immediate profit exists. Under such circumstances, private investors are loath to underwrite the project and the city, in order to secure a supply, must of necessity undertake the cost of providing water to its inhabitants.

Furthermore, in securing a supply of water (especially under the conditions named in the preceding paragraph), a large use of the power of eminent domain is necessary. To build a dam or to create a reservoir or to construct an extensive system of aqueducts, not to mention the laying of city mains, involves a large amount of land and negotiations with many landowners. With its constitutional and statutory powers, the municipality is in a position to secure the needed lands and rights of way on more favorable terms than is possible in the case of a private company.

FINALLY, water is used extensively for public or *quasi* public purposes. Whether the need is for street cleaning, sewage and storm disposal, public fountains, municipal bath houses, public buildings, or hospitals and sanitariums, it is commonly believed that public policy dictates a program of government ownership. In many towns and cities, for example, the hospitals are supplied water free of charge. It is questionable whether privately owned companies could be compelled to render this service, since it would involve parting with property without compensation. Under municipal ownership, on the contrary, services may be and often are rendered below cost or free of charge when it is felt that questions of public welfare outweigh those of price economics.

ALTHOUGH the major developments in recent decades have been made by municipalities, it is true that privately owned waterworks are still numerous. It is impossible to indicate precisely how many of these companies are still doing business, but

a safe guess would be at least one thousand. Many, however, are controlled by large holding companies, the most important of which are the American Water Works and Electric Company and the Federal Water Service Corporation, and hence private control is to a considerable degree integrated into the hands of a few companies.

The growth of holding company control in this field has been very rapid during the past five years. The National Water Works Corporation, which was incorporated in Delaware in 1928, has increased its subsidiaries from six in September, 1928, to thirty-one at the present time. Some sixty-one communities in five states are served by this group.

The American Water Works and Electric Company, formed in 1927, operates in sixteen states and serves 218 communities with an estimated population of nearly 2,500,000. Most extensive in its control of waterworks is the Federal Water Service Corporation which, after nearly five years of existence, has acquired subsidiaries in 247 communities widely scattered throughout the United States. It is estimated that more than 2,500,000 people are served by this group.

REGARDLESS of the form of ownership, the science of water supply has developed wonderfully in recent decades. The typhoid and other sickness rates have declined almost universally. Without question, water is much less often impure and roily today than formerly. And in the vanguard of this movement to improve water supply, one has found the municipal authorities in charge of publicly owned plants.

In fact, the local governments have so generally proved their capacity to operate water systems that we are likely to witness further growth along these lines. If one is to judge the future by reference to the past, no other conclusion is possible.

If the Court Should Change Its Views on "Prudent Investment"—

IF the Supreme Court should change its views and hold that a utility is entitled only to a return on the money invested in the enterprise, or on "capital prudently invested," those who now complain that state regulation has broken down, that the Federal courts have usurped the powers of the states in regulation, that the Federal Constitution should be amended in respect to these matters, or that all regulation should be in the hands of a Federal agency, would quite likely relinquish their arguments.

Such a reversal would probably end the claims that regulation has failed to keep pace with the economic development of public utilities, and "that it shows tendencies to subservience to the monopolistic interest which it is presumed to control."

—GEORGE R. GRANT

Public Memorials

Erected to the honor of men and women in their capacities as representatives of public service corporations

To Whom Erected	Form of Service	Location of Monument
Alexander B. Andrews 1841–1915	Railroad financier	Round Knob, North Carolina
Alexander J. Cassatt 1839–1906	Railroad president	New York City
John Fitch 1743–1798	Steamboat pioneer	Bardstown, Kentucky
Henry N. Flagler 1830–1913	Railroad promoter	St. Augustine, Florida
Robert Fulton 1765–1815	Steamboat pioneer	Brooklyn, New York
William W. Gordon 1796–1842	Railroad pioneer	Savannah, Georgia
James J. Hill 1838–1916	The railroad "Empire Builder"	St. Paul, Minnesota
John M. Hood 1874–1902	Railroad promoter	Baltimore, Maryland
Thomas Lowry 1843–1909	Street railway president	Minneapolis, Minnesota
Charles Minot (*For service in 1851*)	Telegraph operator	Harriman, New York
Samuel F. B. Morse 1791–1872	Telegraph pioneer	New York City
Radio Operators (*Lost at sea*)	Steamship service	New York City
William J. Palmer	Railroad pioneer	Mexico City, Mexico
Samuel Rea 1855–1929	Railroad president	New York City
Sarah J. Rooke (*For service in 1908*)	Telephone operator	Folsom, New Mexico
Samuel Spencer 1847–1906	Railroad builder	Atlanta, Georgia
John F. Stevens 1853–	Railroad engineer	Marias Pass, Montana
John W. Thomas 1830–1906	Railroad president	Nashville, Tennessee
James Valentine 1842–1874	Railway engineer	Richmond, Virginia
Cornelius Vanderbilt 1794–1877	Railroad builder	New York City

A New Job for the State Commissions—the Regulation of Oil

Heretofore the public service regulatory bodies have confined their attention to the utility corporations; they are now extending their scope to include the regulation of a natural resource in which no utility service is involved. This development is new—and significant.

By THURMAN HILL
PUBLIC SERVICE COMMISSIONER OF KANSAS.

ADVANCEMENT in scientific discoveries, new demands for commodities and service that are now necessities to most of the public, and the tendency to consolidate or monopolize businesses of general public interest have greatly enlarged the classes of business of a *quasi* public character. Governmental regulations have likewise been extended to meet the changed conditions.

To the public service commissions, created to protect and enforce the rights of the public, have been delegated, by the legislative bodies, in most instances, the administrative control of these industries.

THE greatest problem recently given to the public service commissions is to devise some method of control of the production of crude oil so as to prevent waste, inequitable taking, and to protect those who have an interest in a common source of supply. That the business of producing crude oil is "clothed with a public interest" should not be questioned. The public, certainly in so far as the community in which the pool is located is concerned, is interested in equitable taking and preventing discrimination in favor of a few. This public interest is, however, quite foreign to the public interest which has heretofore been subject to the supervision of the commissions. In the past the commissions have protected the public in its purchases of service or commodities from a utility. They will now protect the public in the conservation of a natural resource in which no utility service is involved.

IT is a far cry from the regulation of railroads (the chief duty first placed upon commissions) to the control of crude oil by the state regula-

tory bodies, but not so far, however, when one remembers that at the inception of railroad regulation the principal by-products of petroleum were lubricating oil and kerosene with consequently little public interest in crude oil. The old-fashioned kerosene lamp consumed a goodly supply of kerosene; sewing machines, grindstones, binders, and industrial machinery required lubricating oils. Along came the Ford, and with it came flocks of motor vehicles thirsting for gasoline and lubricating oil. To supply this need pioneers sought for oil fields. Wildcatters risked their last nickels in the hope of finding liquid gold. Pennsylvania, Ohio, and West Virginia could not meet the demand. Venturesome oil men searched afar, and today in nine mid-western states oil is produced in large quantities. To refine this black gold, pipe lines were laid, refineries were built, filling stations arose on every corner, and modern gasoline pipe lines were put in use. The industry developed so rapidly it would not or could not control itself. Selfish developers competed with greedy operators to see which could produce the most crude oil. Refineries extended their operations and soon had too much gasoline on hand. In the struggle for oil supremacy, big organizations installed thousands of filling stations, in fact glutted the country with them.

The oil states at this point were forced to protect the interests of the public by legislation. The people had an inherent right to prevent the waste of a natural resource. Crude oil when produced, refined, and used is irreplaceable. The state could not stand by and watch a valuable mineral right despoiled. The commonwealth has a pecuniary interest in the taxes derived from this new property.

As a result conservation acts have been passed in most of the oil producing states. Conservation has been extended in a number of states to the control and regulation of production. Two states have gone so far as to include economic waste.

LAWS regulating the drilling, operation, and plugging of wells are in force in Arkansas,[1] Colorado,[2] Indiana,[3] Montana,[4] New York,[5] Ohio,[6] Pennsylvania,[7] Utah,[8] and West Virginia.[9] Under these conservation laws the regulatory bodies have been given authority to promulgate rules to carry out the intention of the acts.

Illinois has an act relating to sinking, filling, and operating of wells and a provision for filing maps of oil and gas wells in the office of the department of mines and minerals,[10] but no provision for a supervising commission or office appears to have been made.

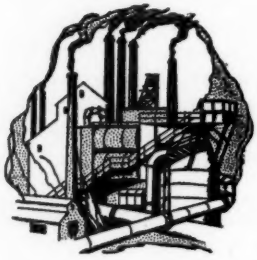
The conservation law of California goes largely to regulation of operating methods with the additional provision that there may be coöperative development and operations, and when such agreement is entered into it binds the successors and assigns of the parties thereto in the land affected thereby.[11]

New Mexico has a law providing for coöperative agreements of very similar nature.[12] California is at the present time working on a proration law with the idea of regulating production.

Kentucky has the usual conserva-

[1] For this and subsequent citations, see page 648.

Commission Regulation, Once Opposed by the Oil Industry, Is Now Demanded



"A MARKED *change in sentiment toward state regulation has been observed in the administration of oil proration laws. Five years ago the industry generally fought any suggestion of regulation. Now every branch of the industry demands protection by regulatory bodies, rules, and orders. Apparently regulation of the oil industry by state commissions is an accepted fact.*"

tion statute regulating the method of drilling and producing oil with an additional provision making common carriers of all pipe line companies supplying oil or natural gas for public consumption. It requires the transportation of the oil or gas of lines connected with each main tributary line and in case the tributary line has insufficient capacity the offered oil or gas must be taken in equal portions.[13]

In 1920 Louisiana passed an act which provides that during a period of overproduction in any oil field, each purchaser in such a field is required to accord to each producer an opportunity to sell that proportion of the oil taken by the purchasing agent as the potential production of oil from the well of the producer bares to the potential production thereof on all wells in such field. There was no limitation, however, placed upon the amount of production. Any producer could produce to a full capacity for storage purposes.[14]

In 1926 the conservation commission of Louisiana was given power to devise and enforce rules for the spacing of wells in any area of the state to suit the particular needs of any locality.[15]

Michigan has a conservation act which gives the supervisor of wells the power to make rules and regulations such as he may find necessary to prevent damage or waste of the oil and gas, with additional power to prevent economic waste.[16] The authority granted including the term "economic waste" has apparently not been construed to extend to any authority other than the regulation of the manner of production and drilling wells.

In addition to the usual conservation statutes three states, Kansas, Oklahoma, and Texas, have proration and production regulation statutes which prohibit the production of crude oil or petroleum in any manner and under such conditions as to constitute waste.

UNDER the Kansas statute the term of "waste" is construed in addition to its ordinary meaning to include underground waste, surface waste, waste of gas energy, and waste incident to the production of crude oil or petroleum.[17]

The public service commission is given authority to promulgate rules and regulations to prevent such waste and to protect gas and oil bearing strata.

The act provides further:

> "That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste as herein defined, then any person, firm, or corporation having the right to drill into and/or produce oil from any such common source of supply may take therefrom only such proportion of all the crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm, or corporation bears to the total production of such common source of supply. The public service commission is authorized to so regulate the taking of crude oil or petroleum from any one common source of supply within the state of Kansas as to prevent the inequitable or unfair taking from such common source of supply of such crude oil or petroleum by any such person, firm, or corporation and to prevent unreasonable discrimination therein: Provided, That the power granted in this section shall not apply to wells from which the average daily production of crude oil or petroleum is less than 15 barrels per day."

The Oklahoma [18] and Texas [19] laws are similar to that of Kansas with the exception of the added power in the Oklahoma act which gives to the commission control of economic waste. The Oklahoma law has recently been sustained by a 3-judge Federal court, and is now before the Supreme Court of the United States for final determination.

BEFORE the laws regulating production were put in effect by Kansas, Oklahoma, and Texas, the oil industry in the United States (particularly in the midcontinent fields) was in a chaotic condition. Overproduction at home and large imports from abroad had demoralized the prices paid for crude oil at the wells and this in turn affected wholesale gasoline prices. Crude oil dropped as low as 18 cents a barrel. Refineries were trying to find a market for gasoline at 3 cents a gallon and in some instances as low as 2 cents.

Under the authority granted the commissions in the three states it was possible to prevent physical waste and through proration to regulate the amount of production. This authority has not been seriously challenged.

The right of the commissions to regulate production by proration has been considered by the United States Supreme Court, and in the opinion it said:

> "Hence, it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment, by them, of their privilege to reduce to possession, and to reach the like end by preventing waste." [20]

IT would appear to be very clearly established that the legislature may lay down a general rule for the prevention of waste and for the protection of the rights of several owners of wells in a common pool, and to delegate to an administrative body the power to promulgate rules and regulations covering matters of detail for placing the general rules into effect.

Seven or eight months have passed since the commissions in the three states have attempted to regulate production. Crude oil now brings 80 cents to $1 a barrel, depending on gravity. Overproduction has been curtailed; the orgy of wildcat drilling is ceasing; gasoline prices have improved; gasoline bootleggers are being run down, and the whole industry is being stabilized.

In order to secure these impressive results, the commission first determined to interfere as little as possible in the oil business and when it did, it acted upon the advice of an oil advisory committee of four members, selected by the commission.

Upon complaint being made to the public service commission, it was referred to the oil advisory committee for investigation and report. When it became necessary to prorate the oil from several pools in Kansas, the operators in the pool were requested to meet and work out plans acceptable to them. These suggestions were then submitted to the oil advisory committee, then by the oil advisory committee to the commission for acceptance or rejection. In a great majority of instances the plans of the operators were incorporated in the order. The local state problems have been many and perplexing. The commissions are traveling on a new road and they must chart it carefully.

It soon developed that the oil industry in the middle west could not be helped without the coöperation of other oil states. It was useless to curtail the output of crude in a few states if others allowed production to run wild. The only solution was to secure a gentleman's agreement among the oil states to limit production to equal demand. After considerable study and research, acting for the Kansas commission, the writer submitted a stabilization plan at a conference of oil state representatives and the regulatory bodies of Texas, Oklahoma, and Kansas. The plan was finally adopted and the rest is history in the oil world.

The work of the regulatory bodies of Texas, Oklahoma, and Kansas in restoring order out of chaos in the oil industry was praised by Secretary Lamont of the Department of Commerce as one of the most constructive things done for the oil industry in the United States. And it is predicted as a result of the work of the regulatory bodies of these states that eventually will come an interstate oil compact intended to forever end waste and chaos in American oil fields. A marked change in sentiment toward state regulation has been observed in the administration of oil proration laws. Five years ago the industry generally fought any suggestion of regulation. Now every branch of the industry demands protection by regulatory bodies, rules, and orders.

Apparently regulation of the oil industry by state commissions is an accepted fact.

Citations

[1] Acts of Arkansas, 1927, p. 715.
[2] Colorado Comp. Laws, 1921, Chap. 55.
[3] 1926 Indiana Stats. Vol. 2, Chap. 23.
[4] Montana Laws, 1925, Chap. 56.
[5] Cahills Consolidated Laws of New York, 1930, Chap. 21, Art. 19.
[6] Ohio Code, 1926, Vol. 1, Chap. 11, p. 378.
[7] Pennsylvania Stats. 1924, Supp. p. 443.
[8] Compiled Laws of Utah, 1917, p. 848.
[9] West Virginia Code, 1931, Chap. 22, Art. 4.
[10] Illinois Rev. Stats. 1925, Chap. 93, § 85.
[11] California Laws, 1931, Chap. 791.
[12] New Mexico Laws, 1929, Chap. 132.
[13] Carrolls' Kentucky Stats. 1922, Chap. 93A.
[14] Louisiana Acts, 1920, p. 88.
[15] Louisiana Acts, 123 of 1926.
[16] Public Acts of Michigan, 1929, p. 31, Amended by Act 61, 1931.
[17] Kansas Laws, 1931, Chap. 226.
[18] Oklahoma Compiled Stats., 1921, Chap. 68, § 7954.
[19] Texas Rev. Civ. Stats., 1925, Art. 6014.
[20] Ohio Oil Co. *v.* Indiana (1900) 177 U. S. 190, 44 L. ed. 729.

OUT OF THE MAIL BAG

Why the Westerner Is More Inclined to Government or Municipal Ownership than the Easterner

In the article in your March 17th issue by Mr. Francis X. Welch, entitled, "Is the Municipal Plant a Social Phenomenon?", Mr. Welch opens up a new and what should prove a fruitful source of information on the government ownership question, as participated in by municipalities.

To the "straw men" which he sets up as possible causes of radical-mindedness, should be added the cause which he discusses briefly on the last page of his article, namely,—the case where no private agency volunteers to render the service making municipal ownership the only alternative if service is to be had. I believe this has long been recognized as one of the leading causes of municipal ownership of light plants. It may not be endemic but it deserves a place.

Most westerners will, I believe, take exception to the emphasis which Mr. Welch places upon their lack of respect for property rights. To reason that such a state of mind obtains in the west as the result of "$2 government land" is unsound. Did not the only colonists on the Atlantic Coast get their land through royal grants or charter?

Ungranted land was "waste" and could be had for the taking. Presumably the individual colonists did not pay even $2 an acre, as was the case with the Ohio settler, or $1.25 per acre as was the case with the Pacific Coast homesteader.

Whether a man left Europe early in the 17th century to settle on a gift piece of land in the new world, or whether he left the Atlantic Coast early in the 19th century to take up a homestead west of the Rockies, the cost of the land itself cannot have resulted in such opposite effects upon his subsequent attitude toward private property as the article states. It is true that several generations of ownership have lapsed in the former case, but the alleged respect for private property of these people grew from the same kind of a nucleus as in the latter instance—namely, free land.

I would suggest that one reason why the westerner continues to look to government lies in the nature of the title which he got to his property. These titles were not outright. The government has generally held out something,—water rights in the west are typical. They are not riparian as in the east, and do not go with the land, but must be obtained from the state. The Federal government reserves rights to minerals, rights of way for canals, reservoir rights, power rights, and withdraws vast areas from any form of settlement and subsequent tax revenue to the state. Most of the remaining public domain cannot be had except encumbered by some government reservation. Had government extinguished its title, giving each individual complete title to his land and to everything above it and below it as was the practice in eastern states, the dependence upon government would probably never have developed.

Another circumstance bearing upon the problem is that in the east a relatively large per cent of the population own no real estate. Their investments are in corporations and corporate stocks and bonds. On the other hand, in the west a relatively large per cent of the population have most of their investments in land. I suggest that in this circumstance it is natural to find greater respect for the property rights of private corporations.

There is altogether too much *ex parte* treatment of the municipal ownership question. The root of the matter can be reached only by facts and analysis such as is so happily suggested by Mr. Welch's excellent article.

—D. J. Guy,
Washington, D. C

The Responsibilities of the Public Accountants to the Corporation's Stockholders

Public Utilities Fortnightly should be congratulated for the articles which it published recently by Freeman Tilden, the gist of which is to the effect that accountants auditing the books of public utilities

should be selected by the stockholders rather than by the company managements. To allow a management to select and thereby (often) control its auditor may, under certain circumstances, be tantamount to giving a bank cashier *carte blanche* to select his own auditor. I am sure the average director would not sign a blank check if asked to do so. Why, then, should stockholders do so? This opinion is based on my experience as a New York state certified public accountant since 1913.

Although the subject of Mr. Tilden's articles deals with utility companies, the examples he quotes are in the industrial field. May I be permitted to supply the deficiency and cite an example in the public utility field which has come to my attention?

A few outside stockholders appeared at the annual meeting of this particular utility company for the purpose of having certain apparent inconsistencies in the company's report explained to them. The sudden increase of over $1,500,000 "cash" from the previous year was not accounted for by new financing during the year, the slim margin of profit over dividends paid nor by the excess of annual depreciation allowance which, as usual, was invested in additional road and equipment. The only possible explanation was reduction during the year of approximately $1,500,000 in an account called "miscellaneous investments." It appeared, after inquiry of the president at the meeting, that included as "miscellaneous investments" was over $1,500,000 of certificates of deposit (cash in banks) and that this amount was transferred to "cash" in 1931, where it properly belonged in the first place. Which proves that balance sheets conceal as well as reveal.

At first blush, it might appear that the company management had been pursuing a conservative policy, although how could such an unchanging item as "cash" be classified and regarded as such a highly fluctuating item as "miscellaneous investments?" The fact in the case, however, was that the directors, having decided to pay common stock dividends in scrip, actually, through this misclassification, hid $1,500,000 surplus cold cash from the sight of its stockholders. If the balance sheet had been properly classified, this cash, more than twice that necessary to cover annual scrip dividends, would have been visible to the naked eye of stockholders, who unquestionably would have had weighty additional evidence to submit in support of their objections to the policy of paying dividends in scrip. Incidentally, the directors of the company owned less than one per cent of the common stock of the company, in the aggregate.

I submit that any accountant appointed by, and responsible to, the stockholders would not have stood for such jugglery by the management without exposure.

—Mark Wolff,
New York

The Question of Street Car Rates in Kansas City.

In Public Utilities Fortnightly of March 17, 1932, at page 373, I note an account of the reported action of the Public Service Commission of Missouri in Case No. 7927, *Re* Kansas City Public Service Company. Your account of the decision indicates that this company was charging a 6-cent fare and sought permission to file experimental increased rates. As a matter of fact, the company has been charging for more than a year a 10-cent cash rate, with a weekly permit card selling for 40 cents and entitling the holder to unlimited rides during the week upon payment of 5 cents per ride.

The company was not seeking an experimental increased rate but, in fact, a slightly decreased rate, in so far as the majority of its patrons were concerned, by eliminating the weekly permit card and substituting therefor four tokens for 35 cents. The reason for this suggested change was that present economic conditions had resulted in so much part-time employment that a majority of our patrons had found the weekly permit rate to be uneconomical and were, therefore, paying the straight 10-cent fare, and that substitution of the token rate would give these patrons a 12½ per cent reduction.

The protest of the so-called Citizens' Civic Club was that no rate in excess of a 6-cent fare should be approved in that such fare would be sufficient to cover operating expenses, taxes, and interest on the bonds issued *since* the reorganization; that the bonds and stocks issued in the reorganization did not represent new money invested and, therefore, were not entitled to consideration.

Needless to say, this radical suggestion was not accepted by either the Missouri or Kansas commissions which acted on the company's application.

Powell C. Groner,
President, Kansas City Public Service Co.

The Effect of Depression Dollars on Utility Finance

What today's price levels are doing to the theory and to the laws of rate making and the new problems they are presenting to the public service corporations. By Samuel Crowther—*in the next number of this magazine.*

What Others Think

The Determination of a "Fair Rate of Return" as a State Commission Function

"A DESIRE to make really effective the control of rates . . . was the original, and remains the basic, concern of regulation," writes Nelson Lee Smith, Ph. D., assistant professor of economics, at Dartmouth College in his scholarly prize essay, "The Fair Rate of Return in Public Utility Regulation." Yet, as he says in his preface, "the determination of the fair rate of return is a much neglected phase of public utility regulation."

This looks like an astonishing contradiction, but it probably presents as true a picture of much of the regulation that goes on in these United States as could well be presented in two sentences. Awake or asleep, at his bridge table or on his golf course; whether engaged in pitching horseshoes on the village green or prodding the initiatory goat at a lodge meeting, the 100 per cent public service commissioner sees looming over him, at work or at play, the admonitory shadow of his Public. The chief concern of this Public is that it shall pay as little as possible for a given service. As Dr. Smith puts it, "fear of monopolistic (*sic*) of price was a leading cause of regulation and explains the desire to keep rates down."

What Dr. Smith would have his readers remember is that so far as the little detail of rates is concerned our utility regulators while busy bludgeoning prices for utility service into the smallest possible bits, should occasionally rest from these tiring labors and give a little thought to the matter of "fairness" to all concerned. Involved in this matter of "fairness" are so many economic principles, precepts, and formulas that the Dartmouth professor whose labors on this truly monumental task won him the Hart, Schaffner & Marx second prize in 1928, has filled 222 closely printed pages with his text, and 112 pages more with appendices and an index containing exhaustive case and bibliographic material of considerable value to serious students of regulation in this country.

PROFESSOR Smith's work will be regarded as a distinct advancement of the frontiers of learning by those who believe public utility regulation is a science and that it should be administered by scientific men. The next step (at least as this reviewer sees it) should be to put several copies of this book into the hands of a group of average American public service commissioners, selected at random, and to lock them and the books together in a room, preferably a room with padded walls and no sharp corners on the furniture. After forty-eight hours the doors should be unlocked and tests should be made of the patients' blood pressure, heart action, knee reflexes, and ability to recognize friends, relatives, and everyday household articles. Those who respond normally may then safely be permitted to rejoin their families. If the suspicion persists that these gentlemen have not really read the book, it will be unfortunate, but nothing can be done about it.

Do not be misled by all this into believing that Dr. Smith has looked with any such jaundiced eye upon the state of regulation in this nation. Likewise do not let this reviewer hoodwink the reader into suspecting that his book is unintelligible to any but the most highly trained economist. The intention here is merely to suggest that Dr. Smith has

plumbed depths of human knowledge about the item "rate of return" which have seldom been plumbed before; and that anything more than a casual riffling of its pages with their inexorable parade of economic reasonings will convince those of the author's customers who have looked upon regulation as a simple matter requiring only ordinary horse sense that they have sadly overestimated the mental prowess of the horse. They will be sadder men if not much wiser.

Professor Smith explains his deep interest in the question of fair rate of return when he points out that this element of regulation has been overshadowed by controversy concerning methods of physical valuation. He declares that "the rates and earnings of public utilities—and thus the allocation of resources to the various members of this group of enterprises—are controlled, not by the rate base alone but by the fair value and the fair rate of return taken together."

This is a simple enough statement of a truth that will be recognized even by freshman students of regulation, as fundamental, yet it has been frequently enough ignored—at least the "fair return" part of it—to justify Dr. Smith's treatment of this part as "a much-neglected phase" of the regulatory art.

IT would be futile in such a brief survey as this to attempt a summation of the Dartmouth savant's *opus*. His own concluding chapter which is a summing up of his general discussion, consumes twelve pages of the book. If any one paragraph throws a spotlight on his central theory it is this one:

> "From both the legal and economic points of view, the basis of public control is the inadequacy of competition to protect the public interest in certain extremely important fields of economic activity. Accordingly it is legitimate to identify the objectives of authoritative regulation with the ideals of free competition, although not with the competitive process in all of its admittedly wasteful aspects. In our opinion a presumptive case for using ideal competition as the pattern for regulation arises out of the fact that society still places its main reliance upon free competition to give coherence to values and to guide production, distribution, and consumption. And this view is strengthened, historically by the fact that regulation has tended to produce the competitive result, at least in the case of what seems to have been its major concern, the reactions upon distribution."

From this point Dr. Smith chooses to emphasize the relation between current regulatory practices and ideal competitive production. If the former follows the latter, then, he says, competitive distribution may be expected as a result; if competitive distribution is regarded as undesirable "its modification may subsequently be effected safely through processes involving a minimum of reaction upon production and which are not directly or exclusively related to the regulation of public service monopolies."

Thus, concludes Professor Smith, we are led to the view "that fair rates for a regulated public utility must be defined in economic terms as the opportunity cost of the service."

He believes lack of uniformity in accounting is responsible for much confusion, especially accounting for the fair return. He thinks regulation should be kept busier; that:

> "The movements of rates of return for railways and public utilities have displayed unwarranted sluggishness. Fair rates of return have lagged, on both upward and downward swings behind the movement of opportunity costs as indicated by yields on securities of various types."

THE causes for this "sluggishness," are attributed by Dr. Smith in scholarly language, to be sure, to the plain "sluggishness" of the commissions themselves. He reaches this conclusion from studies of pretty reliable guides—the opinions rendered in rate cases. Rates and rates of return are revised too infrequently; the commissioners show an unscholarly preference for "round numbers"; their discussions of details and factors are "undiscriminating"; they select a rate but neglect to support it with any data. In general, according to Dr. Smith, "fair rate of

return" is handled too casually, and he concludes:

> "In respect to no other phase of public utility regulation is there greater present need for further investigation and more precise statement by the commissions."

THE earnest public servant newly setting forth from politics or business through the forests of regulation may well be troubled by this essay which, with its clear cross-section of the sub-soil, shows the roots of public utility control to be interlaced wide and deep in the earth of general economic science.

He should read it through three or four times, but if the prospect of this gives him a headache he will promote a more general awe for the dignity and mystery of his craft if he can manage to get it into the hands of some of his Public, who think utility commissioners just lock themselves in and toss a quarter for heads or tails.

—RAYMOND S. TOMPKINS,
Baltimore, Maryland

THE FAIR RATE OF RETURN IN PUBLIC UTILITY REGULATION. By Nelson Lee Smith. A Hart, Schaffner and Marx Prize Essay in Economics. New York: Houghton Mifflin Company. 33 pages. $3.00. 1932.

Are Domestic Electric Rates Twice as High as They Should Be?

RATES for electric service charged to the domestic and small consumer are twice as high as they should be, is the opinion of Morris Llewellyn Cooke, trustee of the New York State Power Authority. According to a recent article published under his name in *The Survey Graphic*, Mr. Cooke arrives at these conclusions because he finds that from 1926 to 1930 the electric industry charged these domestic and small commercial consumers five and a half billion dollars for only one hundred billion kilowatt hours of current, while the total revenue received for its total sale of three hundred thirty-four billion kilowatt hours amounted to less than nine billion dollars.

In other words, the domestic or small consumer paid during this period 61 per cent of the electric industry's revenues, but used only 30 per cent of its production.

Mr. Cooke believes that this unbalanced situation is loaded with political dynamite, in view of the fact that the domestic and small commercial consumers constitute 90 per cent of our population. He concedes that electricity will never be as free as air, but he is of the opinion that it can be sold on the same basis that water is sold where its use is hardly restricted because of the cost.

MR. COOKE emphasizes the need of power planning for the future. This planning, he believes, should be done by Federal and state supervisory boards working in coöperation. He favors the creation of the following boards to achieve this end:

> "1. A Federal body analogous to the Interstate Commerce Commission to regulate transmission of power across state boundaries, and to regulate power holding companies operating in more than one state.
>
> "2. A Federal electric planning board with administrative authority to study the electrical needs of the country today and as they will be a generation from now; to establish a nation-wide plan for affording the cheapest power for the farm, the home, and the factory; to conserve power resources, and to plan out a unified, coördinated, and economical system of national electrification.
>
> "3. State commissions with administrative, as contrasted with judicial, powers emphasized, or if necessary augmented. Such commissions should simplify and standardize rate schedules, institute revealing accounting, and revamp rates so that the several classes of service will be more nearly self-sustaining.
>
> "4. A 'giant power board' in every state to study out and safeguard its own electrical future, to coöperate with the equivalent Federal authority."

If Mr. Cooke's charge that the rates to this class of consumers are twice as high as they should be is well founded, then instead of contributing 61 per cent of the electric industry's revenues during the period studied for the use of 30 per cent of the total energy produced, they should have contributed only 30 per cent or exactly the same proportion as their use of total energy consumed. The large power consumers presumably, in this event, should have made up the balance and contributed 70 per cent of the total revenues received. This would make the wholesale rate exactly equal to the retail rate—which seems, offhand at least, to be quite a novel suggestion for doing business.

—M. M.

FUTURE POWER PLANNING. By Morris Llewellyn Cooke. *The Survey Graphic.* March, 1932.

Round Trips to the Realms of Adventure as a Utility Service

FROM the Canadian daily *Le Soleil,* (printed in French), of Quebec, we learn of an interesting innovation in passenger promoting activities of the Great Western Railway in England. Some enterprising executive of this line evolved the idea of a "Mystery Express," the passengers on which would have not the slightest idea of where they were going. The first trip was made on Good Friday. Purchasers of tickets on the Mystery Express were assured only that the round trip, which was in the nature of a day's pleasure outing, would be worth the price of the ticket. The train set out from London under sealed orders and the destination when revealed proved to be a beautiful scenic spot along the Thames. Everybody seemed satisfied with the trip, especially the railway company.

The New York *Times* commented editorially on this new form of round-trip excursions as follows:

> "The appeal here was a double one: to the sense of mystery and to the gambling instinct. As against the competition of the private automobile and the excursion busses, railroad travel suffers from lack of flexibility. In an automobile you may go where you please, at least in theory; in practice you go where every other automobile goes. The railroad route is fixed. The idea of a train leaving for the unknown removes that handicap. As for gambling, who can resist paying a dollar for a trip that may turn out to be worth $1.50?"

THE somewhat inflexible rules of the Interstate Commerce Commission, having to do with the filing of regular schedules, would probably interfere with such a railroad adventure on this side of the Atlantic, and there is some doubt as to whether other forms of utility service would lend themselves to such mystery or romance. Our taxicab drivers, of course, have been known to accept thirsty passengers whose only direction was a wink, a fat tip, and a desire to be taken to "some nice place." Humorous weeklies have suggested that our telephone companies look into the social possibilities of a Blind Date Bureau. All told, Americans seem to prefer to take their utility service straight and leave the collateral activities to European utilities. American tourists who have much patronized French telephone service can testify that depositing a franc piece in a Parisian pay booth is a distinct adventure.

—M. M.

EDITORIAL. *New York Times.* March, 1932.

"From 100 to 3,000 Per Cent Profit"

An analysis of some of the extraordinary claims of extraordinary returns to investors in utility corporations, will appear in the next number of PUBLIC UTILITIES FORTNIGHTLY.

Should Governmental Regulation Be Extended to All Industries?

THE remarks of Supreme Court Justice Brandeis in his recent dissenting opinion in New State Ice Company *v.* Liebmann (P.U.R.1932B, 433) to the effect that states should be given a free hand to experiment with regulatory economics even with such a blunderbuss weapon as legislative *fiat,* if they were so disposed, has caused renewed nation-wide discussion as to whether the game of economic regulation is worth the candle.

Justice Brandeis himself ventured no opinion as to the wisdom or advisability of the particular brand of legislation which was attempted by Oklahoma in the Liebmann Case. Indeed, since the learned Justice has presumably studied carefully all of the numerous authorities on economic control which he cited, there is a strong probability that he has his doubts about the success of governmental regulation of industries not heretofore regarded as public utilities. He merely took the position, however, that since our leading economists have been shown up by the course of events during the last few years to be as ignorant of the precise workings of the "dismal science" as the ubiguitous Man-In-The-Street, there should be no great harm in letting Oklahoma legislators try their hand at the task of lassoing a runaway machine age. At any rate, Uncle Sam ought not to interfere.

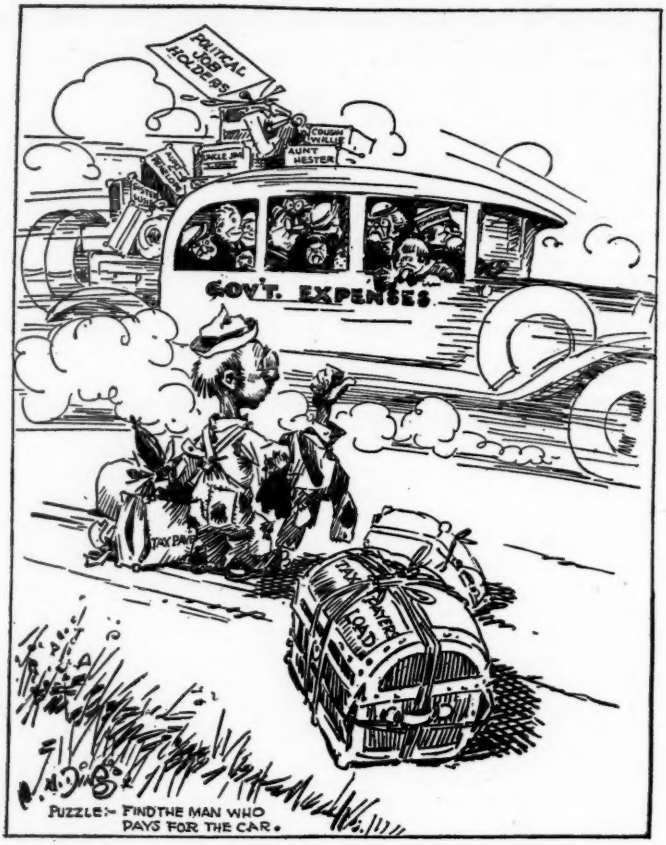
The position taken by Justice Brandeis is, of course, somewhat outside of the scope of the current discussion by writers who, unrestricted by constitutional inhibitions, prefer to deal directly with the merits of the case. Naturally, the first question that must be answered before we apply regulation to our industries in general is whether or not it has been successful or not in its application to those industries on which it has been tried already—the public utilities.

THE 4-year program adopted by the League for Independent and Political Action, which was published in these pages some weeks ago, took the position that regulation of public utilities has been a flat failure, that it cannot be overhauled so as to be made workable and that the sooner we stop tinkering with it and install government ownership the better off we will be.

Dr. John Bauer, the well-known authority on regulation, takes issue with this view. He believes that regulation of utilities so far has had very disappointing results. He believes that the occasional failure of regulation has been due more to the inadequacy of the system than to direct corruptive influences—indeed, that the defects in the system gave rise to the abuses which are so widely deplored. But Dr. Bauer still thinks that the old regulatory machine can be fixed up by "fundamental revisions as to system and methods of administration." After such a revision the American public would be given a good opportunity to test more completely the relative advantages of regulation and public ownership. He concludes with a note of warning:

> "But, if the efforts at revision are blocked, if the criticisms of the present system are pooh-poohed, and if the utilities continue the course they have pursued since the war, there is no alternative for honest and intelligent citizens but to espouse the program announced by the League for Independent Political Action. So far the companies have succeeded mostly in preventing any substantial reconstruction. They will doubtless continue in what appears to be shortsighted policy for them. Yet, it is possible that reasonable revision can be obtained notwithstanding the companies and their cohorts of defenders."

STRANGE to say, *The Nation,* a liberal weekly which has given such wide and continued publicity to the program of the League for Independent Political Action, which condemns utility regulation as being hopeless, speaks favorably in an editorial of its April 13th issue concerning the universal application of a system of governmental regulation to



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THEY DON'T EVEN SLOW DOWN

all basic industries. Commenting on the Liebmann Case, the editorial states:

"Judge Brandeis at the start seizes on the right of a state to provide licensing apparatus in order to prevent waste. A single courageous state may serve as an experimental laboratory. He points to the analogies of railroads, street cars, motor vehicles, and cotton gins. A city may sell ice, wood, gasoline at retail. It may build warehouses, elevators, packing houses, flour mills. Where and when a private business should be converted into a public one is primarily a matter for each state to determine. If such determination is not capricious or unreasonable, Federal courts should not interfere. A state may even adopt foolish remedies, because foolishness is comparative and the Federal courts do not possess a monopoly in that product. He piles up the facts thick and fast—data concerning population, temperature, amount of refrigeration, development of dairy business, recent origin of ice business, cost of ice to families with children, refrigeration for marketing purposes, increasing use in consumption, and wastes of uncontrolled overproduction or faulty distribution. Judge Brandeis in effect makes a mighty field-survey of the relation of frozen water to the happiness of people. The evils indicated a situation needing a cure, and the cure desired by the state of Oklahoma was obviously not so fantastic as to force the Federal court to override the wishes of

the people. In the end he indicates his own judgment that the elimination of waste in the production and distribution of ice might be properly hoped for through the mechanics devised by the state of Oklahoma.

"The fight is on. Forces will be aligned behind Sutherland and behind Brandeis. Those who believe in a planned economy will oppose the mandatory anarchy of the majority opinion. Therefore, let us hope that the next time a name is sent in to the United States Senate for appointment to the Federal bench the Judiciary Committee will confront the nominee with the Sutherland and Brandeis opinions. Let us stop this nonsense of thinking that juristic behavior is a thing apart from personal prejudice. The Senate should reject any candidate who opposes the Brandeis opinion. Moreover, may we not expect that those who commented favorably on the Swope plan will reject the Sutherland philosophy of uncontrollable abundance?"

THE trenchant political observer, Mr. Frank Kent, writing in the *American Magazine* for April, is of the opinion that American business is already being regulated generally. He says that the movement for governmental regulation of private business began a little more than sixty years ago —about 1870—all over abuses of the railroads as then conducted. Congress set up the Interstate Commerce Commission to keep watch over the railroads. Later on, Congress pushed its own creature into the field of telephone and telegraph regulation. Then came our Shipping Board. Next consider the Comptroller of Currency, a very powerful fellow, who has escaped public notice because our more articulate political observers are long on talk but short on research. This comptroller, nevertheless, has very practical regulatory powers extending into every national bank. The Internal Revenue Bureau, the Federal Trade Commission, the Department of Justice, to whom has been entrusted the enforcement of our anti-trust legislation, the Federal Power Commission, the Tariff Commission, the Radio Commission, the Federal Farm Board, and the Public Health service, all form a part of a very refined system of Federal regulation which has been imposed in some form or another upon practically all of our basic industries.

THIS rising tide of regulation is not only universal in its application, but is even, in some cases, double plated; that is to say, there are two and sometimes three layers of it imposed on the same business by the Federal, state, and local governments, respectively. Mr. Kent tells of a Maryland oyster dealer whose products were stamped "O.K." one morning by a Federal inspector. In the afternoon a state health department inspector appeared and directed certain changes in the business in the interest of sanitation. Later still the same day, the state conservation department inspector paid him a visit and made a third inspection of the whole plant and finally condemned certain barrels of oysters as violating the "cull law."

Mr. Kent mentions other minor agencies with mild regulatory powers, such as the Bureau of Mines and the Bureau of Standards. True, these business regulations have not reduced business to the status of public utilities where the earnings as well as the right of competition are controlled (which might be called the extreme limit of regulation), but they are progressing well along that line. The Liebmann Case represents an effort of Oklahoma to shove the ice business over into the final stage. The effort was prevented by the Supreme Court, but the movement still continues. Mr. Kent points out dozens of bills now pending in Congress to extend the regulatory powers of these numerous bureaus or to create new ones. No bills are pending to abolish or curtail such bureaus. The movement toward more and more regulation continues unabated until finally Mr. Kent visualizes the fulfilment of the prophecy made a century ago by De Tocqueville, the French writer who predicted that the movements of governmental paternalism would result in a nation of stupefied animals, squeezed dry of initiative and shepherded by the government.

Summing up, Mr. Kent finds fault with the people for tolerating regulation-mad politicians and with the more enlightened politicians for failing to come forth with a concrete program for cutting down the dense mass of governmental regulation which now throttles American business and threatens to choke it. On the other hand, he does not believe we can, as yet, get along without any regulation at all. Business is not sufficiently enlightened to be depended upon to regulate itself. In other words, Mr. Kent believes in a middle-of-the-road policy for the present and finds that we have wandered off too far towards the regulatory side of the road.

FORMER Interstate Commerce Commissioner Thomas F. Woodlock continues to apply Christian principles to present-day ills. He feels that if our economists and legislators would recognize that good economics are good ethics and conversely, much benefit would result. Commenting on the bill by Senator Walsh of Massachusetts to empower the Federal Trade Commission to act as a sort of commercial court in passing upon the equity of all proposed trade agreements, prices, patents, wages, mergers, and so forth, he stated:

> "Here we have clearly emergent the 'just price' and the 'just wage' of mediaeval days, with a strong suggestion of the mediaeval guild system—all perfectly good ethics and, therefore, perfectly good economics. And we have the regulative power removed from the courts acting *post factum* to a commission acting *ante factum* which is the most obvious kind of common sense. Without accepting every detail of Senator Walsh's bill as sound and well-adapted to the end in view, it can be said that it correctly envisages that end and takes the most direct road to that end. Further, it can be said of it that it is distinctly preferable to a bill which would amend either the Sherman Act or the Clayton Act—or so it seems to this writer."

Mr. Woodlock is cognizant of the ills of competition, but believes we can settle them in the same way the mediaeval guilds settled such matters. He stated:

> "'Regulation' of trade and commerce was a necessary part of the guild system and is a necessary part of any economic system which bases upon coöperation. The rules and practices of the guilds were very carefully drawn and were jealously watched by the courts of the day. It was, indeed, in guild days that regulation of 'public utilities' originated, was accepted and was practised even before the law of contract took shape. As this writer tried to point out some time ago, the notion that 'utilities' are 'public' because they perform governmental functions is a pure modern invention without the slightest support in history, law, or common sense, presumably advanced to support the 'prudent investment' theory of value for rate making after a large advance in commodity prices. Nobody likes 'regulation' but it is necessary for the reason that law is necessary, and we must make up our minds to accept it as a lesser evil than the evil of anarchic competition."

Mr. Woodlock believes that we shall some day have to consider very seriously legislation along the lines proposed by Senator Walsh and the sooner the better.

—F. X. W.

IS REGULATION HOPELESS? By Dr. John Bauer. *National Municipal Review.* April, 1932.

OUTLAWING A PLANNED ECONOMY. Editorial. *The Nation.* April 13, 1932.

WHOSE BUSINESS IS IT? By Frank R. Kent. *The American Magazine.* April, 1932.

GUILDS' LESSON. By Thomas F. Woodlock. *The Wall Street Journal.* Feb. 22, 1932.

The Economic Situation of the Farmer—and the Outlook for Rural Electrification

THE dean of Harvard University's Graduate School of Business Administration has long since demonstrated to practical business men that he has a viewpoint which reaches far beyond the mouth of the Charles river.

When he speaks publicly, there are thousands of us in our shirt sleeves, doing our stint in a work-a-day-world, who stop and listen. It is no surprise to anyone, therefore, that in his latest book "Business Looks at the Unforeseen" Dean Donham makes valuable and stimulating contributions to contemporary business thought. This reader is frank to confess, however, that he has found himself so engrossed in Dean Donham's handling of the farm problem—his breath so completely taken away by the courageousness of this attack—that the many other admirable points in the book recede into relative unimportance.

Recognizing the farm problem as "among the greatest" of our current business problems, and after pointing out that one fifth of our population lives on farms, that this portion of our population is saddled with a mortgage debt which it cannot possibly pay on the prevailing level of agricultural prices, and that return of prosperity to the farms is one of the essentials of returning prosperity in the nation as a whole, Dean Donham says, flatly and unequivocally:

> "Regardless of international price levels, we should do whatever is necessary to fix domestic prices of our money crops on a fair relative basis with industrial prices. . . . The export market for these products on any terms which will enable us to maintain the kind of standards of living which we desire, and which are wholly possible in our industrial section, seems to have disappeared. . . . Under these conditions, tariffs on all these basic commodities should be maintained or imposed, and some elastic method should be evolved for separating price levels on those commodities grown for domestic consumption from price levels on the same commodities grown for export."

BRIEFLY, Dean Donham is advocating price fixing for that portion of our agricultural money crop which is grown for domestic consumption. His device for achieving this result would be tariff adjustment. Pending the time when American agriculture would have adjusted itself to a basis of production mainly for the domestic market, the surplus would be sold abroad at the going world market prices and each domestic producer would receive, according to the size of his output, his relative share of what the domestically consumed and the foreignly consumed portions of the crop would fetch. Note particularly that the Federal government is not asked to guarantee or protect world prices—only to establish a tariff which would assure a fair price on that portion of the crops that is consumed at home.

Now, all of us know that for many years past the mere mention of agricultural price fixing has been anathema to most Eastern industrialists and bankers. The McNary Haugen Bill and the Export Debenture Plan (both of which Dean Donham characterizes as sound in purpose but objectionable in method) were so thoroughly distasteful that they brought their own defeat.

Dean Donham's advocacy of a plan for protecting the domestic prices of agricultural products gives to this viewpoint a respectability (if I may use the word without being misunderstood) which it has not previously enjoyed. He has done a signal public service, and a bold one, in bringing it to the attention of American business men in this fashion. And, to me, his arguments in its favor are quite irrefutable.

THE long-term trend of expansion in the consumption of electrical energy has been seriously arrested by the current business depression. It seems to me a fair assumption that vigorous resumption of expansion in the electrical power industry will be coincident with the return of at least a moderate degree of prosperity to the one fifth of our population living on the farm—that is, coincident with the adoption of Dean Donham's plan, or of some other plan which has a corresponding effect.

—LAURENCE H. SLOAN

BUSINESS LOOKS AT THE UNFORESEEN. By Wallace Brett Donham. New York: Whittlesey House, McGraw-Hill Book Co. Inc. 1932.

Utility Employees Abroad Do Not Suffer the Effects of Cutthroat Competition of Industry

THE International Labor Organization is not a labor union in the customary sense. Membership is by countries, most of which (although not all) belong to the League of Nations. The two most important absentees from the organization are the United States and Soviet Russia. Half of the representatives who attend the conferences are the official spokesmen for their governments; the remaining representatives are divided equally between employer and worker delegates. Nearly all of the worker delegates are affiliated with organized labor in their respective countries. Similarly, the employers' spokesmen are affiliated with organized business. While the International Labor Organization clearly appears to have been established as a result of pressure from the organized labor movement, it is evident that business interests are well protected by the system of representation—particularly in view of the fact that most government delegations are likely to be entirely acceptable to business interests.

A main feature of the organization's activity is to draw up recommendations concerning standards affecting working conditions. Each nation which is a member of the organization is then free to enact or not, as it sees fit, the standards sponsored by the organization. What is involved is a kind of procedure for improving labor conditions through legislation by means of international action, although the final decision remains with each government. A partial list of subjects in connection with which improved standards are advocated includes: the work of women, young persons, and children; accident prevention and industrial hygiene; night work in bakeries; the length of the working day; the conditions of seamen's employment.

A primary motive behind such attempts to elevate standards is obviously the humanitarian one. But evidently of equal significance has been the realization that factors of competitive costs in international trade are involved. Consequently, there exists a very practical reason for adopting world-wide standards in order that those industrial establishments and nations with low standards of working conditions shall not have an advantage over competing firms and nations which have a more advanced policy in these matters.

According to the review of the International Labor Organization's activities presented in the volume, just published about its activities, a degree of success has been experienced in the effort to improve standards. But, depending upon the specific purpose, there has been considerable variation in achievement.

THE public utility industries as such receive no direct attention. Of course, however, in so far as the standards advocated by the organization were adopted by any nation, the utilities would come within the terms of the general legal requirements, which in itself is significant. To the extent that improved labor conditions are sought in particular industries, as in bakeries and in the maritime trade, it is noticeable that practices partaking of cutthroat competition are sometimes in large part responsible for the bad conditions. In general, it is probable that most utility industries are free from the kind of cutthroat competition which frequently seems to make almost unavoidable the degradation of labor. This is not to say that in all utilities everywhere the lot of working people is ideal. But the situation indicated does point to the fact that the standards which the International Labor Organization strives to "sell" to the governments of the world in most cases are not likely to be of such a nature as to make utility managements regard them as impossibly drastic.

Mention should be made that a component part of the organization is the International Labor Office, with headquarters at Geneva, which functions continuously. "Correspondence offices," including one at Washington, D. C., are maintained in various parts of the world. Much of the work of the Labor Office is administrative; in addition, it has been responsible for numerous research studies; at various times research assistance has been extended to various bureaus or firms in the United States.

—LYLE W. COOPER,
Marquette University

THE INTERNATIONAL LABOUR ORGANIZATION: The First Decade. Preface by Albert Thomas, London: George Allen and Unwin Ltd. Distributed in the United States by The World Peace Foundation. 1931.

The Utterances of Congress About the Utilities

In the Senate

BUS REGULATION

MR. Tydings (D.) of Maryland obtained consent to have reprinted in the appendix of the *Record* a letter from Mr. William Hirth, publisher of the *Missouri Farmer*, addressed to Senator Hawes of Missouri, entitled "A New Job for Congress." The letter advocated regulation of interstate trucks and bus carriers with rate-fixing powers over such traffic for the Interstate Commerce Commission. (*April 22, 1932.*)

WASHINGTON RAILWAYS

MR. Austin (R.) of Vermont moved the consideration of a bill for the proposed street railway merger in the District of Columbia over the objection of Mr. La Follette (R.) of Wisconsin. A vote was taken and the motion was rejected. (*April 25, 1932.*)

MORE BUS REGULATION

MR. Hawes (D.) of Missouri obtained permission to have inserted in the *Congressional Record* a letter addressed to him from Mr. William Hirth, publisher of the *Missouri Farmer*, advocating regulation of interstate bus and truck carriers with rate-fixing powers over such traffic for the Interstate Commerce Commission. This was the second time Mr. Hirth's article was reprinted in the *Record* within five days. (*April 27, 1932.*)

POWER IN POLITICS

MR. Norris (R.) of Nebraska obtained consent to have reprinted in the appendix of the *Record* an editorial by Franklin Hichborn, delivered January, 1932, to the public ownership conference in Los Angeles. Mr. Hichborn's address was entitled "Political Activities of the Power Trust in California," and attacked alleged corrupt political activities of public utility corporations in the state of California. (*April 29, 1932.*)

In the House of Representatives

WASHINGTON RAILWAYS

MR. Palmisano (D.) of Maryland moved for a consideration of House Joint Resolution 154, to authorize the merger of street railway corporations operating in the District of Columbia. Mr. Black (D.) of New York spoke in favor of the bill. Mr. Snell (R.) of New York also spoke in favor of the bill. Mr. Swing (R.) of California, Mr. Boylan (D.) of New York, and Mr. Blanton (D.) of Texas, spoke against the bill. No final vote was taken. (*April 25, 1932.*)

ALASKA CITY PLANT

ON motion of Mr. Williams (D.) of Texas a bill was passed authorizing the town of Petersburg, Alaska, to issue bonds not exceeding $100,000, for the purpose of improving and enlarging the capacity of the municipal light and power plant and the water and sewer systems, and for the purpose of retiring bonds previously issued at 7 per cent. The proposed bonds would pay 6 per cent. (*April 26, 1932.*)

MUSCLE SHOALS

MR. Bankhead (D.) of Alabama brought up for consideration the revised Muscle Shoals bill. This bill provides that if no suitable bid for the operation of the site is received within eighteen months, the Federal government should operate. It also provides that a suitable private bid might be

received even after the expiration of the 18-month period. Mr. Almon (D.) of Alabama spoke in favor of the bill, pointing out that it would mean cheaper fertilizer for the farmers and cheaper power to all the territory surrounding Muscle Shoals, and employment for thousands of workers. Mr. Michener (R.) of Michigan spoke against the bill, stating that the proposed cheaper fertilizer was a snare and a delusion, and that the government should not at this time particularly permit itself to be involved in projects which would call for great capital expenditures. He felt that the power property should be leased to private interests. Mr. Greenwood (D.) of Indiana spoke in favor of the bill, pointing out the advantages of governmentally operated power projects. He introduced into the *Record* a rather detailed account of the operations of a municipal plant at Washington, Indiana. Mr. Ransley (R.) of Pennsylvania spoke against the bill stating that he was unalterably opposed to the government embarking into any sort of business. Mr. Stafford (R.) of Wisconsin likewise saw in the bill objectionable socialistic tendencies. After considerable open debate by various members of the House, Mr. Taylor (D.) of Tennessee spoke against the bill commenting upon the inability of the government to conduct in an efficient manner a business project. Mr. Lovette (D.) of Tennessee spoke in favor of the bill stating that while he did not approve of the government in business as a general proposition, he thought that certain exceptional cases warranted such a policy.

There was considerable further debate. (*May 4, 1932.*)

Other Articles Worth Reading

DEBTS AND TAXES. By Calvin Coolidge. *The Saturday Evening Post.* March 26, 1932.

ELECTRIC RAILWAYS PROPOSE MORE ADEQUATE CONTROL OF HIGHWAY TRANSPORT. *Aera.* March, 1932.

FEDERAL ECONOMY IS A MYTH. *National Sphere.* April, 1932.

LEGAL ASPECTS OF CONTROL OF POWER. By Henry Mills. *Barron's.* April 4, 1932.

PROSPERITY FOR SHACKLED RAILROADS. By H. T. Newcomb. *Review of Reviews.* April, 1932.

PUBLIC INTEREST, CONVENIENCE, OR NECESSITY IN RADIO BROADCASTING. By J. M. Herring. *Harvard Business Review.* April, 1932.

PUBLIC OWNERSHIP IN CANADA. *The Financial World.* March 23, 1932.

The steadily mounting deficit of the Canadian National Railways has been a matter of growing concern to the Canadian taxpayer, and radical changes in the competitive situation between this system and the Canadian Pacific now seem assured.

THE HOPE FOR LIBERALISM. By Claudius Murchison. *The North American Review.* April, 1932.

THE TAXICAB INDUSTRY FACES A CRISIS. By Hawley S. Simpson. *Aera.* March, 1932.

WHAT TO DO ABOUT THE RAILROADS. By Eugene S. Taliaferro. *North American Review.* April, 1932.

Publications Received

A STRIKELESS INDUSTRY. By M. H. Hedges. The John Day Company, New York. 1932. 30 pages.

BUSINESS AND THE PUBLIC INTERESTS. Trade Associations, The Anti-Trust Laws and Industrial Planning. By Benjamin A. Javits. New York: The Macmillan Company. 1932. 304 pages. Price $2.50.

FIFTY YEARS OF NEW YORK STEAM SERVICE. New York: New York Steam Corporation. 136 pages. 1932.

The story of the founding and development of a little-known public utility service.

JUSTICE OLIVER WENDELL HOLMES. By Silas Bent. New York: The Vanguard Press. 1932. 386 pages. Price $4.50.

LUSTY SCRIPPS. By Gilson Gardner. New York: The Vanguard Press. 1932. 274 pages. Price $3.50.

PRICING FOR PROFIT. By William Lucius Churchill. New York: The Macmillan Company. 1932. 272 pages. Price $3.

THE HOLDING COMPANY. By James C. Bonbright and Gardiner C. Means. New York: McGraw-Hill Book Company, Inc. 1932. 398 pages. Price $4.

The March of Events

Lease of Muscle Shoals Approved by House

THE House on May 5th passed, by a vote of 183 to 132, a bill providing for the leasing of Muscle Shoals within eighteen months to private interests for the manufacture of fertilizer and chemicals. If after eighteen months there are no private bidders for the operation of the project, the government itself will operate the plant. The measure provides for the creation of a board whose duty it would be to negotiate a lease if possible within the eighteen months. The terms of the lease are provided for in the bill.

Power generating facilities are to be guaranteed and allocated in the capacity required by the lessee for the manufacture of fertilizer and other chemicals, and the board is required to supply to the lessee from such capacity electric energy, and, pending its use by the lessee for such purposes, or when not required, the sale and other disposition shall be made by the board subject to recall at and upon request of the lessee. The bill contains the following provisions:

"Electric energy generated by the power generating facilities not so guaranteed and allocated shall be sold or disposed of by the board at the switchboard on an equitable basis, municipalities, counties, states, and the manufacturers of chemical products to have preference in the order named. Any such power sold to others than those above mentioned shall be subject to recall, after reasonable notice not exceeding eighteen months, for the production of fertilizer and/or fertilizer ingredients, or for the use of municipalities, counties, states, or for the manufacture of chemical products."

Radio Commission Reports on Ownership of Stations by Utilities

IN a report by the Federal Radio Commission to the Federal Trade Commission it is stated that six radio stations "appear to be owned" by public utility companies producing and distributing gas and electricity and one by a municipality producing electricity; eight by concerns manufacturing electric generating equipment and motors; and seven by concerns manufacturing electric and radio equipment. In addition to the stations owned by utility and electric companies it is said that fifteen broadcasting stations are listed as selling time of broadcasting programs for public utilities.

Charitable Contributions as Operating Expenses to Be Probed

THE Interstate Commerce Commission has entered a proceeding on its own motion to determine whether a contribution of $75,000 by the New York Telephone Company to the Emergency Unemployment Relief Fund of New York city is a proper charge to operating expenses. The question involved is of so much importance as a precedent with respect to the accounting for donations made for charitable or like purposes, that the attention of all carriers subject to the Interstate Commerce Act and of the state commissions has been directed to the proceeding, in the event that they may wish to intervene and be heard.

The New York commission has also been giving consideration to this same donation by the New York company.

President's Appointment to Federal Power Commission Upheld

THE United States Supreme Court, in an opinion handed down by Mr. Justice Brandeis on May 2nd, unanimously upheld the appointment of George Otis Smith by President Hoover to the office of member and chairman of the Federal Power Commission. Chairman Smith's name had been sent to the Senate for confirmation and after confirmation his appointment was completed. Then followed the removal of certain subordinates, which action met the disapproval of some of the Senators. The Senate has a rule providing for a certain time within which it may reconsider its action, and within that time, it is claimed, the confirmation was reconsidered and disapproved.

Attorneys for the Senate then started proceedings to oust Chairman Smith. This was opposed on the ground that the appointment had become final and that the Senate had no power to revoke its confirmation after the President had completed the appointment.

Arizona

Water Company Asks Court to Cancel Reduced Irrigation Rate

ATTORNEYS representing the Cortaro Water Company, serving the farmers in the vicinity of Tucson, according to the Tucson *Citizen*, have filed a motion in the Maricopa Superior Court asking that it set aside an order recently made by the corporation commission reducing the rate charged for farm irrigation. The commission order followed a complaint filed about a year ago.

The company in its petition asserts that the action of the commission in reducing the rate from $6.50 to $5.50 per acre foot was illegal, unlawful, and unreasonable.

California

Water Rate Increases Voted by Long Beach Council

WATER rate increases which will average 23 per cent, says the Glendale *News-Press*, have been voted by the city council at Long Beach in order to meet the amount of annual administrative costs due to the Metropolitan Water District from that city. The increase affects only the water rates and does not change the light and power rates of the beach community.

A protest had been entered against the increase, based on the ground that the proposed means of obtaining the money would affect only the users of water while the burden should be placed on all of the taxpayers. The commissioners replied that the payments to the water district were past due and that if the money was raised by taxation, it would force filing an application with the water district for an extension of time.

Cancellation of Four-Party Phone Service Is Assailed

THE action of the Southern California Telephone Company in canceling its 4-party residence service in Los Angeles has been vigorously assailed by the city council, and the city attorney has been granted additional authorization to reopen the telephone rate case before the state commission, which allowed the company to substitute 2-party metered service for the present 4-party line.

Power Rate Probe Ends with Prospect of Reduction

WITH the announcement that new permanent electric rates will go into effect July 1st, Railroad Commissioners William J. Carr and Leon Whitsell brought the power rate hearing of the San Joaquin Light and Power Corporation to an end on April 27th, following thirteen months in the taking of testimony, says the Fresno *Tribune*, which adds:

"At the same time, Charles P. Cutten, chief counsel for the San Joaquin Light and Power Corporation, entered a vigorous protest to any reduction in rates, but asked that if the railroad commission followed out its original tentative order of a $650,000 reduction, that the reduction be given the urban communities, or in other words, given the domestic consumers, municipal and street lighting, and commercial lighting.

"This statement came after J. S. Moulton, corporation engineer, testified in answer to questions by City Attorney Claude Rowe that the agricultural load under present rates is undesirable; that the corporation believes an increase in this load will be a detriment, and would sooner lose the whole business to gas engine competition than take a reduction in agricultural rates.

"In wording his protest, Cutten claimed that the corporation during the first three months of this year is $375,000 short of paying its preferred dividends and that it fell in revenue $261,000 less than the revenue of the same three months in 1931. He said that $30,000 of this loss is due to the ad interim rates while the remainder is due solely to the falling off of business.

"Cutten said that he had serious doubts but that if the suggested rate reduction is made permanent that the corporation will be unable to earn its preferred dividends for the year and that there was no doubt but that the common stock would earn no dividends. He said that preferred dividends amounted to $1,400,000 annually.

"He urged that the commission reconsider its tentative suggestion and lodged a protest, saying that he was reserving all rights in connection with court appeals, but stating that he was not making the threat of a court appeal.

"He pointed out that while the Pacific Gas and Electric Corporation owned the common stock in and controlled the properties of the

San Joaquin, the latter corporation is a separate utility and a distinct legal entity. He said that as a separate legal entity the San Joaquin cannot be considered for rate-making purposes a part of the P. G. and E., and that the San Joaquin cannot be deprived of its revenues because certain rate schedules may be higher than those of the P. G. and E."

It was suggested by Guy R. Kenny, city rate expert, that a schedule of rates be adopted which would cut 18 per cent in monthly bills for city consumers, permitting consumers with electric refrigerators now using approximately 120 kilowatt hours a month to obtain service for $5.05 monthly instead of the current rate of $6.62. He said that the average consumer using 40 kilowatt hours per month would pay under his suggested rate $2.20 whereas he is now paying $2.55 and in 1930 was paying $2.70.

Colorado

Slash in Water Rates Is Demanded in Denver

SEVENTEEN civic improvement associations have demanded that water rates in Denver be reduced 20 cents on the dollar, we are informed by the Denver *News*. They point out that the water board made a profit in 1931 of $758,787.

Postponement of contemplated improvements and completion of the Eleven Mile Canon Dam, use of the present surplus for maintenance work, and giving the taxpayers the benefit through reduced rates, were in essence the demands of the organization. The board countered with the suggestion that each association appoint a committee to meet with the board and go over the books and weigh other angles of the situation.

Connecticut

Ansonia Water Company Wants to Increase Rates

DIRECTORS of the Ansonia Water Company, according to the Bridgeport *Herald*, want to raise rates in the city for domestic consumption of water and are contemplating filing application with the public utilities commission asking for permission to do so. The proposed increase if allowed, it is stated, would mean an additional expense of $10 a year at least for each house owner. The *Herald* states

"The present rates of the Ansonia Water Company were fixed in 1923 by the utilities commission after a hot fight in which city officials acting in behalf of the consumers sought to prevent the company from making an increase, but to no avail. Under the new rate allowed by the commission, the city has had to pay much more for hydrant service.

"In its new application for the right to increase its rates the water company, it is said, will not tamper with the hydrant costs, but will seek to have an increase allowed in connection with the domestic consumption of water. At present, metered water is supplied at the rate of about fifty gallons for one cent. According to the plan the water company is harboring, at present only thirty-five gallons would be provided for one cent.

"The proposed increase is to be asked, directors of the company say, due to the fact that the installation of meters has cut its income $25,000 a year. At present the 2,600 patrons of the company pay an average of $17 a year for water. The company intends to ask the utilities commission for the right to fix a rate that will add $7 to the average yearly cost of the domestic use of water along with $3 or $4 to cover the cost of meter readings and keeping the devices in repair."

Utilities Plan to Coöperate with Appliance Dealers

THE Connecticut Electric Lighting Association and the Connecticut Gas Association have announced the formation of a joint committee which will strive to foster improved relationships between public utilities and retailers of gas and electric appliances. This group will be known as the Connecticut Merchandising Committee.

The committee will confer with the Connecticut Hardware Association, the Connecticut Master Plumbers Association, and various other retail groups for the purpose of developing a code of principles with respect to the sale of gas and electric appliances which will be acceptable to all concerned and which will place merchandising by the utilities and dealers on a more agreeable basis. Among the principles which the utilities agree to observe in the sale of appliances, according to the Manchester *Herald*, are the following:

"No appliance or merchandise not directly related to the use of gas or electricity should be sold by gas or electric utilities.

"Coördinated advertising of approved appliances should be developed by gas and electric companies and local dealers; the gas or electric company should give all reasonable assistance possible to the dealer in advertising, displays, and sales assistance.

"The utility companies are opposed to the granting of employee discount on appliances to anyone other than those who are bona fide employees, and should do all in their power to prevent abuses of this privilege.

"Utility companies desire that qualified dealers should have the same opportunity as their own salesmen to sell appliances to prospective users of gas or electricity on proposed or authorized line or gas-main extensions. Utility companies should make available currently to dealers a record of proposed or authorized extensions, so that dealers may have knowledge of them at the same time as the utility company's salesmen."

Other proposed principles concern premiums and trade-in allowances, promotional activities with new or as yet little used appliances, deferred payment in merchandising, instalment sales, adherence to the principles by salesmen and employees, relations with manufacturers of appliances, and installation of appliances. Both dealers and the utilities, under the proposed code, would agree that all gas appliances offered for sale should bear the seal of approval of the American Gas Association Testing Laboratory, and that all electric appliances should be standard appliances.

Assurances have been received by the joint merchandising committee that the principles in general are acceptable to the hardware and plumbers' associations.

Florida

Rates to Suburbs Attacked

Two suits asking injunctions against the increase in water rates by the city of Tampa in territory served outside of the city limits have been filed in circuit court, says the Tampa *Tribune*. It is charged that the increase of 50 per cent imposed on water users outside of the city is "unjust, unreasonable, arbitrary, and confiscatory."

One of the suits was based largely on an agreement with the city in May, 1929, under which Virginia Park, which operated a system for the subdivision and for Maryland Manor adjoining, dismantled its wells and advanced $8,400 to the city for construction of a supply line to serve both subdivisions. Maryland Manor paid half of this amount, which was not to bear interest and was not to be returned until the properties were annexed by the city. When this money was advanced and the main built, it is said, there was no intimation by the city authorities that the city would discriminate against the suburbs in water rates.

An audit of the water department, it is claimed, shows a net profit for the city water department for the last three years of more than $50,000 a year, and it is asserted that had not the charges for hydrants and sprinkler systems been reduced to benefit taxpayers within the city, the profit from the operations of the plant would have been much larger.

Illinois

Utility Consumers and Investors' League Is Organized

A LEAGUE has been organized to represent the interests of utility consumers and investors. Its charter defines its object as "to foster a system of public utility control for the people of Illinois which will, among other things, insure to the consumer adequate and efficient service at reasonable and nondiscriminatory rates for gas, electric, water, street railway, telephone, and other utility services and which will adequately safeguard the legitimate investments of the public in the utilities operating in this state and to accomplish these aims by any and all lawful means."

Cradle Type Telephone Charges Are Investigated

THE accounting and engineering staffs of the commerce commission have begun an investigation of the earnings of three telephone companies on account of the 25-cent monthly surcharge which companies collect from subscribers using the cradle type or hand set telephones. The companies involved are the Illinois Bell Telephone Company, serving a majority of the counties in the state; Southwestern Bell, serving a few downstate counties around St. Louis, and the Belvidere Telephone Company, an independent concern operating in Boone county. The Chicago *Tribune* states:

"While none of the three companies has as yet indicated what attitude it will take towards a proposed reduction or abolition of the surcharge, it was assumed that the Illinois Bell, at least, would resist any effort in that direction. The company has approximately 136,000 cradle instruments in service in Chicago alone, bringing in an income of $408,000 a year above that on the regular desk instruments.

"Perusal of the commerce commission's order of January, 1928, allowing the 25-cent surcharge, shows that Illinois Bell challenged the commission's power to issue any orders or hold any hearings on the question of charges on cradle phones. The company had announced a 50-cent monthly surcharge on cradle phones and contended that the commission had no authority to hold a hearing on that rate, 'because the said rate did not set forth any change in rates, but rather set forth a rate for a new class of service.'"

Indiana

Rate Injunction Expected

JUDGE Robert C. Baltzell of the Federal court, according to the Indianapolis *Star*, told state officials and other attorneys that he and two associate judges would grant an interlocutory injunction against enforcement of an order of the commission reducing electric rates 20 per cent in Marion. He said that the injunction would be sustained because the 20 per cent decrease, in the opinion of the court, had been granted without sufficient evidence to sustain it and that the order bordered upon an infringement of the Fourteenth Amendment to the Constitution, forbidding confiscation of property. The *Star* informs us:

"He explained that if no appeal were to be taken the order making the interlocutory injunction permanent merely would be issued verbally. On the other hand, if the commission evinced a desire to appeal the case, the three judges would have to write an opinion giving their finding of facts and conclusions.

"Mr. Ellis and Mr. Huffsmith, he said, informed him that they desired to appeal the case. The preparation of the court's order, therefore, will consume some time.

"Commission engineers have been preparing an audit of the utility company's books and an appraisal of its property. Judge Baltzell suggested that, since this work was well under way, it might be possible for the public service commission to complete its work and hold its final rate hearings on the Marion case before the three judges complete their findings of fact and conclusions. Both Mr. Ellis and Mr. Huffsmith insisted that the court complete its findings, however.

"Judge Baltzell said that in his opinion some of the Marion utility rates might be too high. He did not believe, and neither did his associates, that the situation justified a 20 per cent decrease in rates."

Commissioner Ellis, in the order reducing the company's rates, stated that the company was earning a return varying from 10 to 13 per cent upon the value of its property used and useful in Marion, and that it was earning approximately $150,000 more each year than the amount to which it was entitled. Under § 122 of the Public Service Commission Law, he ordered an immediate reduction. The company asked for a temporary injunction against enforcement of the rate order and it was granted after the company had posted a bond to the amount of $25,000. Judge Baltzell granted the petition for the temporary restraining order and the three judges heard the case February 15th. Judge Baltzell is quoted as saying that neither he nor his associates were of the opinion that § 122 had been applied wrongly.

Injunction Sought against Indianapolis Water Rates

AN injunction against the new rates authorized for the Indianapolis Water Company is being sought in superior court. Eight apartment and realty companies object to the new schedules.

The new rate schedules reduce the minimum monthly domestic rate from $1.50 for 700 cubic feet to $1.08 for 500 cubic feet and eliminated $66,000 from the water bill paid by the city for fire protection. To make up part of this loss, the commission authorized increases in rates for certain quantities of water above 700 cubic feet. The objectors allege that their costs would be increased as much as $1,800 a month by the new rate schedule.

The water company contends that the reduction in minimum water bills has reduced the rates of about 70 per cent of the public thus far. The injunction is not sought against the entire rate schedule but only against the increases. It is stated that there is every likelihood, however, that if the injunction is granted, it will have the effect of throwing out the entire rate schedule as the company would, undoubtedly, seek to have the old schedule reinstated or will take some other action to prevent a larger loss than the $55,000 agreed upon when the reduction was granted.

Kentucky

Year-round Natural Gas Demanded by Civic Clubs

A REPORT by the Public Utilities Bureau of Louisville containing recommendations for a new franchise of the Louisville Gas and Electric Company, but suggesting a mixture of artificial and natural gas, has stirred up wide interest in Louisville on the question of natural gas the year around. A joint committee of the Taxpayers' League and the Council of Civic Clubs is attempting to interest all citizens in the question and to press for the following objectives: Natural gas all year, no advance in gas rates, no minimum monthly gas or electric charges, and fair tenure of franchise.

The bureau in its recommendations stipulated monthly minimum charges for both gas and electricity and an increase in gas rates with a decrease in electric rates.

The chief engineer of the Public Utilities Bureau, in a report to the mayor, stated that an excessive investment would be required to give Louisville an all-year supply of natural gas which would require a big increase in costs to the consumer.

There has also been some agitation for a payment of from $200,000 to $400,000 for a new gas and electric franchise, which is in sharp contrast to the $25,000 asked by the city for the present plan under which the Louisville Gas and Electric Company is furnishing service. So far no upset price has been recommended by the bureau.

Massachusetts

Senate Refuses to Order Gas Rate Inquiry

THE senate, by a roll call vote of 19 to 9, on April 22nd, rejected a resolve directing the state department of public utilities to investigate the services rendered by the Dedham and Hyde Park Gas Company, according to the Boston *Transcript*, which adds:

"The fight for the measure was led by Senator Max Ulin of Boston, who declared that the company acts as a middleman by purchasing the gas it supplies from Boston and Worcester gas companies 'at a very high rate.' He said that at the present time there is an application pending before the utilities department seeking an investigation into the reasonableness of the rates, but added that the resolve calls for a more complete inquiry. 'Why should a public utility company purchase gas from another company and then distribute it to consumers at a profit?' he inquired. The Boston Consolidated Gas Company is big enough to supply gas to Boston consumers and yet residents in Hyde Park are supplied by the Dedham and Hyde Park Company at a rate higher than that charged by the Boston company.

"Senator Henry Parkham of Boston defended the adverse report of the Ways and Means Committee on the measure and said that there was no need for the resolve in that the application before the utilities department would cover all phases of the matter."

Michigan

Rate Probe Held Up by Federal Court Proceedings

THE Lansing city council passed a resolution asking the public utilities commission for a speedy determination of the Michigan Bell Telephone Company rate case in order to relieve citizens from continued payment of "exorbitant rates." The commission, according to the Lansing *Journal*, replied that it cannot act so long as the case is pending before the Federal court.

The city council takes the stand that since there has been a general reduction in current prices of all the ordinary and usual necessary living expenses, there should also be a reduction in rates. It is said that the commission is now preparing data on which it may begin to take testimony in a new rate case when the Federal court disposes of the present case. In preparing for such an investigation the commission has been appraising telephone company's property on the basis of present values, said the *Journal*.

The telephone rate controversy opened when the commission in 1925 ordered a reduction in rates. These rates were placed in

effect and are still in effect but the company went into Federal court and attacked the order on the ground that it was confiscatory. The master in chancery took testimony and upheld most of the contentions of the company. Then after the decision of the United States Supreme Court in the Chicago telephone case, which overturned some of the master's rulings, hearings were resumed and are still under way.

Attention in future investigations is expected to be given to questions of installations, changes of types of instruments, and extra charges for hand-set instruments. An extra charge of 25 cents a month is made for the hand sets and it costs $2.50 to change the type of instrument either to a hand set or to the other type.

Russell Van Meter, local manager, at Lansing, in discussing service charges against which complaint has been made, declared that they might be eliminated but that the cost of such work would have to be made up in other charges. He said that these charges were based on the average cost of the work and pointed out that in cases where no charge is made for installation or reconnections, persons have telephones installed and then having made no investment, run up toll bills without paying for such service. He said it was considered more fair to charge persons who move from one house to another for connections than to spread the cost of such work against all telephone users.

In connection with the charging of 25 cents a month for hand-set telephones, the local manager explained that if no nominal charge were made, all users would demand them regardless of whether or not the hand-set instruments were needed and the company would be unable to meet the demand. Such a policy also might result in the junking of many of the old style telephones which are on hand. He said that the same extra charge formerly was made when desk set instruments first replaced wall telephones and that the additional charge was dropped after the new type had become widely used.

Nebraska

Low Fare Taxicabs Opposed

THE state railway commission has been investigating complaints by the Yellow Cab Company and the Omaha & Council Bluffs Street Railway Company against low fare taxicab operation of Publix Cabs, Inc. This company, according to the Lincoln *Journal,* charges a basic fare of 10 cents in the city of Omaha.

Counsel for the Yellow Cab Company referred to the new company as "strangers passing through and stopping to exploit its wares." President John N. Shannahan of the Omaha Street Railway testified that the low fare cab companies had failed in nearly every city where they had operated, that the 10-cent minimum fare proposed would seriously affect the street railway company, which is now making only operating expenses, and that the first effect would be the taking off of busses now operated by the company. He declared that the street railway is paying $350,000 a year taxes and has about 1,000 employees.

John G. Williams of Chicago, secretary of the National Association of Taxicab Companies, testified concerning the operation of taxicab zoning systems in other cities and of the discontinuance of this system in favor of the mileage by meter system. He declared that the association favors a taximeter which shows the passenger the mileage and the amount of fare he owes, while under the zoning system the passenger must take the driver's word for the fare as no chart can be placed in a cab that will inform him what the fare should be.

Robert L. Hubler, vice president of the Ohmer Fare Register Company, testified to the failure of the zoning system of fares in American and European cities.

New Jersey

City Boosts Water Rate

THE borough council of Rockaway has increased minimum water rates from $3 to $4.50 for quantities under 7,500 gallons, with a charge of 40 cents a thousand gallons for quantities over that amount. Mayor William Gerard declared the water department was running behind $5,000 per year.

There was some opposition to the increase. One of the councilmen declared that people were getting an increase in the tax rate and that an increase in water rates would inflict an undue burden. The sum of $2,300 was cut off from the $5,300 charged for hydrant rentals, which will be reflected in taxes.

New York

Trend Is Said to Be towards Lower Residential Rate

THE public service commission in its annual report states that residential consumption of electricity has proved a profitable business for public utility companies, which are now recognizing its value and have been making reductions in gas and electric rates. The companies are said to have reduced their rates about $7,400,000 annually.

It is pointed out that but few companies that have a large residential service have failed to maintain their financial position. In some instances residential rates have been reduced to a point below the commercial rate. It is said that "the trend in New York state and elsewhere is distinctly toward lower residential rates even under present conditions." Some of the companies, it is stated, are overcapitalized. They are the ones which are experiencing difficulty now in reducing their rates to any extent and still earn interest and dividends. The New York *Times* states:

"The report also treats of rural electrification, which has been found by the companies to be profitable. Lines have been extended into small communities and others have been tapped from main lines. Today thousands of farms are equipped with electricity for lighting and power purposes, and in many instances farm machinery is operated by electricity.

"On an average the farmer uses 75 kilowatts per month. The 1931 revenues of one power company, it is stated in the report, increased 35 per cent over 1930 because of the more general use of electrical service.

"About 36.5 per cent of Albany county farms are now taking electric service and Rockland county leads all up-state counties with 70.5 per cent of farms that have been 'electrified.' In Steuben county only 8.3 of the farms are using electric service.

"Grade crossing progress has been lightened because of the financial condition of the railroads, and 77 crossings were eliminated in 1931, a less number than in 1929 or 1930. These cost $7,628,000, the report states.

"Belief of the commission is that railroads will continue to develop long-haul business, while busses and trucks are acquiring more of the short hauls. Outside of New York city the state has 257 bus operators, owning 1,970 busses, costing more than $15,000,000 and operating over about 8,500 miles of highway.

"During the year 18 small telephone companies were taken into larger companies. New York state now has about 3,000,000 telephones, or 9 per cent of all phones in the world."

Buffalo Will Oppose Fare Ruling by Special Master

CORPORATION Counsel Charles L. Feldman, according to the Buffalo *News*, has indicated that the city will oppose confirmation of the recommendation by Special Master Arthur E. Sutherland, of Rochester, for a straight 10-cent fare on the Buffalo lines of the International Railway Company. He expressed the opinion that the higher courts would not sustain the special master. Quoting from the *News:* "Principal features of the decision which will be the target of the codefendants include:

"Valuations, allocations, figures allowed on depreciation for the various properties of the company, and the master's estimate of 7½ per cent as the proper return on the I. R. C.'s investment."

Oregon

One-Man Commission Probes Northwestern Electric Rates

PUBLIC Utilities Commissioner Charles M. Thomas, has been investigating the rates of the Northwestern Electric Company in the Portland district. This, according to the Portland *Oregonian*, is the first major instance in which the work of the one-man commission has been observed by the public. The *Oregonian* states:

"The change in the system was effected by the last legislature at the behest of Governor Meier, abolishing the 3-man commission and substituting the single commissioner-public advocate. Thus during the present hearing Mr. Thomas has sat both in the capacity of attorney for the commission and the public in the attack on the Northwestern's rate structure and as judge who must enter a final ruling on the evidence when the case is completed.

"Sitting in this dual rôle, the commissioner occupies a place believed to be unique in the field of public regulation in the United

States. The results of the system are being watched elsewhere and, for this reason, Mr. Thomas is proceeding with extraordinary care and thoroughness in the development of the case."

Testimony by C. R. Lester, chief engineer for the state utilities department, indicated a reduction of approximately 2.8 per cent in the rate of return of the utility, and a consequent downward shift of the rates for power and light of about 10 per cent. This witness valued the properties of the electric company in the Oregon district at $9,147,718, and on this valuation he estimated earnings for 1931 at 10.8 per cent. It was testified that while this was the earning on the properties in the Portland district, the entire company operations on the basis of the adjusted fixed capital are earning just 8 per cent.

Pennsylvania

Hand-set Phone Charges Are Subjected to Attack

REDUCTION or discontinuance of the 25-cent a month charge by the Bell Telephone Company of Pennsylvania for use of hand sets was asked in a petition filed with the public service commission by the treasurer of the Philadelphia County Council of the American Legion. He stated that he was acting on behalf of himself and other subscribers, and he also appealed for general reduction in telephone rates.

Later the complainant withdrew his petition without his attorney's knowledge, but Stanley M. Getz, attorney, announced that the fight to compel a reduction or elimination of the charge would be continued. He said that the company could not end the action "by securing the withdrawal of one of the complaints" but that a new petition would be filed with the commission by additional complainants.

South Carolina

Higher Water Rates to Pay Hospital Deficit

MAYOR Burnet R. Maybank of Charleston has announced that he would seek an increase in water rates to provide $40,000 to make up a deficit now existing in the operating funds of Roper hospital, according to the Charleston *News & Courier*. He said that the increase would be only temporary. This newspaper states:

"Mayor Maybank's decision to seek the hospital money from water revenues was based on a desire to distribute the burden for the hospital on residents both of the city of Charleston and the suburban and rural areas of Charleston county. The waterworks supplies water "in the county as well as in the city."

Tennessee

Optional Rate Schedules Are Explained

THE state railroad and public utilities commission last month heard testimony concerning the rates of the Kentucky-Tennessee Light & Power Company. A comparison of the new rates, which are of the optional kind, with the old block rate system was made. The investigation is the result of an order to show cause why rates should not be reduced. The Nashville *Banner* says:

"K. McIntyre, a consulting engineer from Bowling Green, Ky., testified regarding the optional rate. It was developed, however, that the rate only applied to larger consumers and did not affect consumers of less than thirty kilowatt hours. McIntyre, under questioning by Chairman Hannah of the commission, said that the average residential consumer in West Tennessee used 'approximately eighteen kilowatt hours,' and that the optional rate had only been accepted by 2 per cent of the users, although about 60 per cent of the consumers were estimated to be in the 'minimum' class."

The Latest Utility Rulings

Cost with Adjustment for Changing Prices Is Approved as Basis of Return

THE California commission for many years has preferred to consider actual or historical cost rather than what it terms theoretical and speculative reproduction cost in determining the basis upon which the return of a public utility should be allowed. Sometime ago the commission ordered a reduction in rates of the Los Angeles Gas and Electric Corporation, after fixing the present value by giving dominant consideration to costs with adjustments for changes in price levels and allowance for realized depreciation. A Federal court has recently refused to enjoin the enforcement of the rate order on the ground that it was confiscatory.

The new rates would work a reduction of approximately 9 per cent in the company's gross income. The commission had in fact established two valuation totals. One was characterized historical cost, and the second present fair value. On the historical cost, under the rates established, the company would earn a net annual return of 7.7 per cent, while on the present fair value the return would be 7 per cent. The court, in sustaining the order, pointed out that the annual cost of the company's bond and preferred stock money averaged about 6.17 per cent, and dividends on its common stock ranged from 7.20 per cent in 1916 to 17 per cent in 1929. The gas department, it was found, had no real competition in the field.

The court was of the opinion that the working cash capital allowed a public utility company to cover delayed income receipts from consumers for gas delivered is properly determined by considering the cost of the service rather than the retail prices which would include a profit, and that consideration should also be given to a 30-day credit which is allowed to a utility in its purchases of natural gas. *Los Angeles Gas & Electric Corp. v. California Railroad Commission et al.*

The Vendor of a Transmission Line Cannot Be Held to Specific Performance of a Supply Contract

SOMETIME ago the city of Holton, having its own power plant, contracted to supply for twenty years current to certain neighboring cities, who in turn built their own transmission lines for the rendition of such service. Subsequently, a power company purchased these transmission lines, as well as the distribution systems of the neighboring cities. Whereupon, the city of Holton sued for a decree against the cities for a specific performance of the contract, and against the company to restrain the latter from causing the breaching of such performance. The company and the cities answered that there had been so far no breach or threatened breach, and further that the neighboring cities had not by their contract agreed to use any particular amount of service.

The supreme court of Kansas held that the contracts implied a duty assumed by the neighboring cities not to buy current from any other source than the city of Holton, but that the city of Holton was not entitled to affirmative relief in this case because the neighbor-

ing cities by selling their transmission lines to a power company were now no longer in a position to perform their contracts, and that the power company could not be made to take up the specific performance because it was not an assignee of the cities' rights under the Holton contract. The court declined to pass on whether the power company had incurred tort liability to the city of Holton by inducing the breach of the contracts by the city. A decree of a lower court which favored the contentions of the city of Holton was accordingly reversed. *City of Holton v. Kansas Power & Light Co.*

Minimum Monthly Charge for Electric Service Upheld

CHAIRMAN Maltbie of the New York Public Service Commission has upheld the minimum monthly charge in declining to initiate, upon complaint of the Washington Heights Taxpayers Association, a new and complete inquiry into the rate structures of various companies rendering electrical service in the metropolitan area of New York city. Chairman Maltbie's opinion, which was unanimously approved by all of his brother commissioners present, pointed out that during the last few years there have been various reductions of electrical rates in New York city totaling about seven million dollars a year.

In one of these recent proceedings, the commission, after a long hearing and voluminous testimony, put into effect a $1 minimum charge covering an initial quantity of 10 kilowatt hours. The opinion pointed out that the minimum charge was in use in every city of more than 20,000 population in New York state, and in all but one of 50 important cities outside of New York state selected at random. It was observed that the minimum charge is essentially a compromise between a flat rate, which is economically unsound, and a monthly service charge which, while equitable in theory, presents practical difficulties, including confusion in the minds of the consumers.

The complaint of the Washington Heights Taxpayers Association, which originally appeared to be a protest against a minimum rate, subsequently developed into a protest against the entire residence rate structure, although only a few months had elapsed since new schedules were put into effect following long hearings concerning highly controversial matters, such as valuation, amount of return, and operating expenses. Chairman Maltbie felt that the commission was not warranted in starting another lengthy and expensive rate proceeding at this time. He pointed to the great number of cases now pending before the commission and the amount of work involved, and intimated that if the commission had followed strictly the litigious policy apparently advocated by the complainants in the case at bar, the New York electrical consumers, which have already benefited up to the end of 1931 by annual reductions approximating $7,500,000, would still be without any relief, because it would have been physically impossible for the commission to have handled in a strictly formal manner all of the cases which were settled by informal negotiations with the utilities.

The opinion denied the intimation by the complainants that the commission was unable to judge as to the unreasonableness of proposed reductions without the benefit of a thorough rate case. Chairman Maltbie stated that "if years of experience are worth anything they ought to enable those upon whom official responsibility has been placed to judge whether a definite reduction which can be obtained immediately is worth more than the unknown and uncertain outcome of hearings and litigation." *Washington Heights Taxpayers Association et al. v. New York Edison Co. et al. Case No. 6993.*

A Utility Is Not Required to Serve upon the Expiration of Its Franchise

A NATURAL gas company which served the people of Covington, Kentucky, for many years, obtained in 1909 a supply from West Virginian gas fields. Following some dispute with the city of Covington as to the company's right to transport this supply to Cincinnati, Ohio, both parties finally agreed that the rates for gas in Covington would be on a 30-cent basis. The company subsequently took the position that this rate restriction obtained only during the life of the company's franchise which expired in 1921. The city contended, however, that the rate so fixed was to be perpetual as long as the company used a certain main to transmit its supply.

In 1921, the franchise was extended to January 10, 1932. Shortly before that date the company gave notice to the city that it would cease service thereafter unless a new and suitable franchise could be granted to the company. The city sued to restrain such threatened discontinuance. The Kentucky Court of Appeals has recently affirmed a lower court decree dismissing this suit. The court took the view that negotiations in 1909 became part of the company's franchise which in turn expired in 1921 and consequently after that date the company had no further right to use the city's streets, and the city had no further right to demand service from the company unless a new franchise were granted by the city and accepted by the company. To prevent any hardship from an abrupt cessation of service, however, the court continued a temporary injunction for sixty days to permit the parties to adjust, if possible, their differences in the light of the opinion by the court. *City of Covington v. Union Light, Heat & Power Co.*

A Combination Power and Lamp Rate Is Declared Illegal in Illinois

PROBABLY one of the most important decisions touching on the so-called "merchandising" problem which has been handed down of recent months is a decision of the Illinois Supreme Court sustaining a lower court decree which in turn set aside an order of the Illinois commission respecting combination power and lamp rates for commercial electrical consumers in the city of Chicago. It appears that the utility company affected has for some years had a rate applicable to small commercial power and light consumers known as rate "A2." Under this rate consumers do not have to furnish their own electric bulbs, but the rate charged for service is sufficient to cover, presumably, the power consumed and the cost of furnishing lamps and lamp renewals.

Sometime ago, a chain store operator attacked the rate, asserting that it was willing to furnish its own lamps and was accordingly entitled to a rate for strict consumption without the extra charge for a lamp service which it did not desire. The commission dismissed the complaint but a lower court reversed the commission order. The commission appealed on relation of the utility involved. The higher court, in affirming the lower court, held that in fixing rates for commercial electric service the Illinois commission could not lawfully include a compulsory charge for lamps, since lamps could be commonly found for sale in the open market, and that the furnishing of lamps is not a necessary incident or part of the furnishing of light.

It was pointed out that there is no direct relation between furnishing lamps for illumination and furnishing

electricity for power purposes. It was further pointed out that the cost of lamps is not regarded as an operating expense and that so-called "lamp service" is, in fact, the sale of a commodity which the state had not attempted to regulate. The court felt that the combination power and lamp rate gave the utility a monopoly of the lamp business to the detriment of independent dealers, and that such a monopoly was unlawful. The court held that the consumer was entitled to reparation for the extra amount exacted from it on account of the lamp service which it did not desire. *Consumers Sanitary Coffee & Butter Stores v. Illinois Commission ex rel. Commonwealth Edison Co.*

Detailed Findings by Commission Are Required under New Pennsylvania Law

THE Pennsylvania Superior Court has remanded the Scranton-Spring Brook Water Service Company Case to the public service commission with directions to make specific findings as to the properties considered by it in fixing the rate base and the quantities and unit prices adopted under the various classifications; also to state the facts and methods on and by which it arrived at its conclusions concerning allowances for overheads, and the manner in which it calculated accrued and annual depreciation, and, generally speaking, for further action not inconsistent with the opinion of the court.

This case has aroused great interest in Pennsylvania, and was one of the grounds for recent attacks upon the commission. The water company some time ago filed a schedule of increased rates. The commission, after extensive investigation, held that the new rates were excessive, but allowed rates which were higher than the rates that were formerly in effect.

The failure of the commission to make specific findings is not necessarily attributed to any fault on the part of the commission, since the case was decided under a statute which did not give the courts power to make independent findings of fact and to substitute them for those of the commission. Last year, however, after the commission decision, a new law was passed which required the courts on appeal to consider the entire record of the proceedings, including the testimony, and on its own independent judgment to determine whether or not the findings made and the valuations and rates fixed by the commission are reasonable and proper.

The opinion by the court is devoted largely to disputed questions of valuation concerning which conflicting claims were made by the company and the complainants. The commission apparently considered all the claims and then made its decision without stating in detail the process of reasoning by which it reached the decision.

One claim by the company, which as well as the cities appealed from the commission decision, was that the commission had erroneously deducted $1,000,000 from the valuation. The court was of the opinion that it was quite within the range of possibility that the commission after considering all the circumstances had intentionally made this reduction, but the court believed that the matter should not have been left to conjecture and the reason for reducing the figures should have been stated.

Complaint was made by the company against the refusal of the commission to make an allowance for the expenses of the rate case. The court took the position that whether an allowance should be made or not will depend largely on the final outcome of the litigation. If the company's schedule of rates is substantially sustained, an allowance should be made, while, on the other hand, if the rates filed are